130-334

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 200.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN P. DEXTER, BENNETT R. ALLEN, AND HERMAN R. COFFIN, EXECUTORS OF WILLIAM S. PIERSON, DECEASED, PLAINTIFFS IN ERROR.

vs.

THE CITY OF WATERTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED NOVEMBER 9, 1885.

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1 *Transcript from the Circuit Court of the United States for the Western District of Wisconsin.*

Supreme Court of the United States.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs in Error,

against

CITY OF WATERTOWN, Defendant in Error.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the circuit court of the United States for the western district of Wisconsin, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in said circuit court, before you, between Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, pl'ffs, and The City of Watertown, def't, a manifest error hath intervened, to the great damage of the said Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, in the District of Columbia, on the 12th day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the
3 Supreme Court of the United States, the 12th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

The return of the judges of the circuit court of the United States for the western district of Wisconsin appears by the schedule hereto annexed.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme

Court of the United States, at Madison, in said district, this 15th day of October, A. D. 1885, and of our Independence the 110th year.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

4 UNITED STATES OF AMERICA, }
Western District of Wisconsin, } *ss:*

At a special term of the circuit court of the United States for the western district of Wisconsin, begun and held at Madison, in said district, on the first Tuesday, being the 2d day, of December, A. D. 1884—present and presiding, the Hon. Romanzo Bunn, judge—among other the following proceedings were had, to wit:

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

Be it remembered that heretofore, to wit, on the 3rd day of March, A. D. 1873, came the plaintiffs above named, by their attorneys, Finches, Lynde and Miller, and filed præcipe for a summons as follows:

Præcipe.

Circuit Court of the U. S., W. District of Wisconsin.

WILLIAM S. PIERSON *vs.* THE CITY OF WATERTOWN.

5 The clerk will issue summons for money demand for the sum of three thousand eight hundred dollars, together with interest on $200.00 of that sum from and since January 1, 1858, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1858, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1859, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1859, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1860, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1860, at 7 per cent. per per annum, and also with interest on $120 of that sum from and since January 1, 1861, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1861, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1862, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1862, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1863, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1863, at seven per cent. per

annum, and also with interest on $120 of that sum from and since January 1, 1864, at 7 per cent per annum, and also with interest on $120 of that sum from and since July 1, 1864, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1865, at 7 per cent. per annum, and also with interest on
6 $120 of that sum from and since July 1, 1865, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1866, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1866, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1867, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1867, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1868, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1868, at seven per cent. per annum, and also with interest on $120 of that sum from and after January 1, 1869, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1869, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1870, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1870, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1871, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1871, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1872, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1872, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1873, at seven per cent. per annum, together with costs and disbursements, and make the same returnable according to law.

7 FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

And on the same day filed security for costs, as follows:

Bond for Costs.

Know all men by these presents that we, William S. Pierson and Benjamin K. Miller, are held and firmly bound unto the city of Watertown in the sum of two hundred dollars, to be paid to the said city of Watertown, executors, administrators, and assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals the 1st day of March, A. D. 1873.

Whereas an action for money demand is about to be commenced at the suit of William S. Pierson against The City of Watertown:

Now, therefore, the condition of this obligation is such that if the plaintiff will pay all costs that may be awarded against him, not ex-

ceeding the aforesaid sum, then this obligation to be void; else valid.

WILLIAM S. PIERSON, [SEAL.]
By FINCHES, LYNDE & MILLER, *Att'ys.*
B. K. MILLER. [SEAL.]

Witness:
SAM. M. DIXON.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Benjamin K. Miller, being sworn, says that he is worth the sum of two hundred dollars exclusive of property exempt from execution and his debts.

8 B. K. MILLER.

Subscribed and sworn to before me this 1st day of March, A. D. 1873.

[SEAL.] SAM. M. DIXON,
Notary Public, Milwaukee County, Wis.

Whereupon a summons issued as follows, to wit:

7 *Summons.*

Circuit Court of the United States for the Western District of Wisconsin.

WILLIAM S. PIERSON *vs.* THE CITY OF WATERTOWN.

Summons for money demand.

The United States of America to the above-named defendant:

You are hereby summoned and required to answer the complaint of Walter S. Pierson, the plaintiff in this action, which will be filed in the office of the clerk of this court, at Madison, in said district, and you are also required to file your answer thereto with the clerk of this court, at Madison, and to serve a copy thereof on the attorneys of the plaintiff, whose names are subscribed hereto, at their office, in Milwaukee, Wisconsin, within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the complaint as aforesaid the plaintiff will take judgment against you for the sum of three thousand eight hundred dollars, together with interest on $200 of that sum from

9 and since January 1, 1858, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1858, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1859, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1859, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1860, at seven per cent. per

annum, and also with interest on $120 of that sum from and since July 1, 1860, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1861, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1861, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1862, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1862, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1863, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1863, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1864, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1864, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1865, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1865, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1866, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1866, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1867, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1867, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1868, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1868, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1869, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1869, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1870, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1870, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1871, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1871, at per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1872, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1872, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1873, at 7 per cent. per annum, besides the costs of this action.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Madison, in said western district of Wisconsin, this 3d day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[L. S.] F. M. STEWART, *Clerk.*

FINCHES, LYNDE & MILLER,
Pl'ff's Attorneys.

The service of which appears by the return of the marshal endorsed thereon as follows, viz:

Service.

Served on the within-named The City of Watertown by delivering to August Tauck, city clerk, and Fred. Meyer, city treasurer, of said city of Watertown, personally, each a copy of the within summons this March 6, 1873.

F. W. OAKLEY, *Marshal.*

Fees:

Service, 2	4 00
Copies, 26 fol.	2 60
Travel	3 00
	$9 60

And afterwards, and on the 8th day of April, 1873, came plaintiffs and filed the following affidavit:

Affidavit.

WESTERN DISTRICT OF WISCONSIN, *ss:*

U. S. Circuit Court, Western District of Wisconsin.

WILLIAM S. PIERSON *vs.* THE CITY OF WATERTOWN.

F. W. Oakley, being duly sworn, deposes and says that he
12 is the marshal in and for the western district of Wisconsin; that he served the summons in the above-entitled cause; that at the time of the service of said summons there was no mayor or acting mayor of the said city of Watertown; that, as deponent has been informed and believes, there has been no mayor or acting mayor of said city since on or about the 14th day of February, 1873; and further saith not.

F. W. OAKLEY, *Marshal.*

Subscribed and sworn — before me this 8th day of March, 1873.

F. M. STEWART, *Clerk.*

And thereafter and on the 25th day of March, A. D. 1873, came the defendant and filed its appearance specially as follows:

Appearance.

In the Circuit Court of the United States for the Western District of Wisconsin.

WILLIAM S. PIERSON Plaintiff,
against
THE CITY OF WATERTOWN, Defendant.

GENTS: Take notice that I appear as attorney for the defendant

in this action for the purpose of making a motion to set aside the service of the summons in said action and for that purpose only.

13 Yours, &c., HARLOW PEASE,
Of Watertown, Wis., Defendant's Attorney for the Purpose Above Mentioned Only.

Dated March 24th, 1873.

To Messrs. Finches, Lynde & Miller, plaintiff's attorneys.

And on the same day filed affidavit of August Tauck as follows, viz:

Affidavit.

STATE OF WISCONSIN, } ss:
Jefferson County, }

The Circuit Court of the United States for the Western District of Wisconsin.

WILLIAM S. PIERSON, Plaintiff,
against
THE CITY OF WATERTOWN, Defendant.

August Tauck, being duly sworn, says that he is the city clerk of The City of Watertown, the above-named defendant; that he is not now nor never has been the mayor or acting mayor of said city of Watertown, and that the summons in the above-entitled action was served upon him on the 6th day of March, 1873.

A. TAUCK.

Subscribed & sworn to before me this 25th day of March, 1873.
ERNEST GROSSMANN,
Notary Public.

14 And on the same day filed the following affidavit of Fred. Meyer, as follows, viz:

Affidavit.

STATE OF WISCONSIN, } ss:
Jefferson County, }

The Circuit Court of the United States for the Western District of Wisconsin.

WILLIAM S. PIERSON, Plaintiff,
against
THE CITY OF WATERTOWN, Defendant.

Fred. Meyer, being duly sworn, deposes and says that he is the city treasurer of The City of Watertown, the above-named defendant;

that he is not now and never has been the mayor or the acting mayor of the said city of Watertown, and that the summons in the above-entitled action was served on him on the 6th day of March, 1873.

F. MEYER.

Subscribed and sworn to before me this 25th day of March, 1873.
[SEAL.] ERNEST GROSSMANN,
Notary Public.

And upon said 26th day of March, 1873, the following notice, viz:

Notice of Motion.

The Circuit Court of the United States for the Western District of Wisconsin.

15 WILLIAM S. PIERSON, Plaintiff,

against

THE CITY OF WATERTOWN, Defendant.

Take notice that on the 8th day of April, 1873, at the United States court-room, in the city of Madison, in the State of Wisconsin, at the opening of said court on that day or as soon thereafter as counsel can be heard, I shall move this court to set aside the service of the summons in this action for the following reasons:

1st. That said summons was not served on the mayor of said defendant, The City of Watertown, as required by the charter of said city.

2d. That said summons was not served on three residents and freeholders of said city, as provided by the rules of this court.

3d. That said service is irregular and void.

Said motion will be founded on the annexed affidavits and the marshal's return endorsed on said summons.

Yours, &c., HARLOW PEASE,
Defendant's Attorney for the Purpose of Making said Motion Only.

Dated March 25, 1873.

To Messrs. Finches, Lynde & Miller, plaintiff's attorneys.

Endorsed: Received a copy of the within notice of appearance and motion papers this March 25, 1873. Finches, Lynde &
16 Miller, plaintiff's attorneys.

And in the record of proceedings aforesaid in said entitled cause, on the 9th day of April, A. D. 1873, appears the following order to set aside service of summons, &c., as follows, viz:

Order.

WILLIAM S. PIERSON, Plaintiff,
against
THE CITY OF WATERTOWN, Defendant.

After hearing Mr. Pease for and Mr. Finch in opposition to the motion, and it appearing from the return of the marshal endorsed on the summons filed in this case that the summons has not been served on the defendant in the manner prescribed by law, so as to give the court jurisdiction of the defendant, or so as to entertain any motion or proceedings in the case as against the defendant or on its behalf, unless it appears, the motion is denied and the clerk is authorized to return said summons to the marshal, to be served upon the defendant according to law, or for such further action as the plaintiff may direct conformably to law.

And afterwards, to wit, on the 19th day of June, A. D. 1883, came the plaintiff, by his said attorneys, and filed affidavit and order to revive suit as follows, viz:

17 *Affidavit.*

STATE OF WISCONSIN, } ss:
County of Milwaukee, }

Circuit Court of the United States, Western District of Wisconsin.

WILLIAM S. PIERSON, Plaintiff,
against
CITY OF WATERTOWN, Defendant.

Benjamin K. Miller, being duly sworn, deposes and says that the firm of Finches, Lynde and Miller are the attorneys of the plaintiff in the above-entitled cause, and that he is a member of said firm and is the person who has had charge of said cause.

That the above-entitled cause was commenced on the 3d day of March, 1873, and a summons issued on that day.

That on April 2, 1873, the summons so issued was attempted to be served and was returned by the marshal as served, but on June 19, 1873, the court made an order in the above cause which set aside the alleged service and ordered the clerk to return the summons to the marshal, to be served upon the defendant according to law.

That on the 18th day of April, 1879, the said William S. Pierson, the said plaintiff, departed this life, having first made his last will and testament, wherein he appointed Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin executors thereof.

18 That said last will and testament of William S. Pierson, deceased, was duly proved and admitted to probate in the

probate court, Windsor district, Hartford county, State of Connecticut, on the 28th day of April, 1879, and thereupon said Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, & Herman R. Coffin entered upon their duties as such executors under said will in accordance with the laws of the State of Connecticut, and ever since such time have been and still are the legally acting executors of the last will and testament of William S. Pierson, deceased.

That under and by virtue of the laws of the State of Connecticut the persons named as executors in a will become executors by the proof of the will in probate without the issuance of any letters testamentary; that heretofore, to wit, on the 19th day of June, A. D. 1883, a copy of the will of the said William S. Pierson, dec-ased, with the probate thereof annexed, as required by the laws of Connecticut, duly authenticated as required by law, was duly filed in the county court of Milwaukee county, State of Wisconsin.

That the causes of action upon which this suit is brought arise out of contracts, express, and survive; that no pleadings have as yet been filed in this cause and the defendant has not appeared in this action.

Wherefore this deponent prays that the court make an order in the above cause that the above cause be revived and continued in favor of Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, as executors of the
19 last will and testament of William S. Pierson, deceased, as plaintiffs, and against The City of Watertown, as defendant, and that all proceedings hereafter in this suit be taken in the name of the suit as revived by this order, and that the duly verified supplemental complaint herewith tendered be ordered to be filed as the complaint in this action as revived and stand in lieu of any other complaint, and that the clerk of this court be ordered and authorized to deliver to the marshal the summons in this action as revived, to be served by him upon the defendant according to law.

B. K. MILLER.

Subscribed and sworn to before me this 19th day of June, 1883.
[SEAL.] GEORGE P. MILLER,
Notary Public, Wisconsin.

Whereupon the following order was issued, to wit:

Order Reviving, &c.

Circuit Court of the United States, Western District of Wisconsin.

WILLIAM S. PIERSON, Plaintiff,
vs.
CITY OF WATERTOWN, Defendant.

On all the records, papers, and proceedings on file herein and of record and upon the affidavit of Benjamin K. Miller, and a sugges-

tion having been made upon the record of the death of the
20 plaintiff, William S. Pierson, and it appearing to the satisfaction of the court that Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin have been legally and duly appointed as executors of the last will and testament of William S. Pierson, deceased, and are now acting as such executors, and as such executors are the successors in interest and to the interest of said William S. Pierson, deceased, and that the causes of action in the above-entitled cause arise out of contracts, express, and survive, and a supplemental complaint having been tendered:

Now, on motion of Finches, Lynde and Miller, plaintiff's attorneys, no one appearing for defendant—

It is ordered that the above-entitled cause be, and is hereby, revived and continued in favor of Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, as executors of the last will and testament of William S. Pierson, deceased, as plaintiffs, and The City of Watertown, as defendant, and the supplemental complaint herein be, and is hereby, ordered to be filed as the complaint in this cause as revived, and all proceedings hereafter in this suit are hereby ordered to be taken in the name of the suit as revived by this order, and the clerk of this court is hereby ordered and authorized to deliver to the marshal the summons in this action as revived, to be served by him on the defendant according to law.

Madison, Wis., June 19th, 1883.

By the court:

R. BUNN, *Judge.*

21 And came the plaintiffs, by their attorneys, and filed supplemental complaint on said 19th day of June, 1883, as follows, to wit:

Supplemental Complaint.

22 Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. Dexter, Bennett R. Allen, Herman R. Coffin, Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,
vs.
CITY OF WATERTOWN, Defendant.
} Suit No. 1.

Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, the plaintiffs above named, complaining of The City of Watertown, the above-named defendant, respectfully show to the court in this their supplemental complaint and allege as follows, to wit:

First. That the said plaintiff, Rufus P. Spalding, was at all the times hereinafter mentioned and still is a resident and citizen of the State of Ohio; that the said plaintiffs, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, were at all the times hereinafter mentioned and still are residents and citizens of the State of Connecticut.

Second. That the above-named defendant, The City of Watertown, at the time of the issuing of the obligations hereinafter mentioned was, and ever since has been and now is, a corporation
23 municipal, duly created and organized under and by virtue of the laws of the State of Wisconsin, and existing in said State and under the laws thereof, and that the same was by the laws of said State duly and fully authorized and empowered to issue the obligations hereinafter set forth and to bind itself thereby.

Third. That said defendant, The City of Watertown, on the first day of June, 1856, made, executed under seal, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

No. 184. UNITED STATES OF AMERICA. $1,000.

STATE OF WISCONSIN, *City of Watertown.*

Issued to aid in the construction of the Watertown and Madison R. R.

Know all men by these presents that the City of Watertown is justly indebted unto and promises to pay Wm. B. Hibbard or bearer the sum of one thousand dollars on the first day of Jan'y, A. D. 1877, at the Bank of North America, in the city of New York, together with interest thereon at the rate of eight per cent. per annum, payable semi-annually on presentation and surrender of the annexed interest warrants or coupons at said bank. For the payment of principal and interest the faith and credit of said city of Watertown are inviolably and irrevocably pledged.

This bond is one of a series of two hundred, of the same
24 amount, tenor, and date, issued in conformity with an act of the Legislative Assembly of Wisconsin and ordinances of the city of Watertown.

In witness whereof the common council of the city of Watertown hath hereunto caused to be affixed the corporate seal of said city and these presents to be signed by the mayor and countersigned by the clerk of the common council of said city the first day of June, A. D. 1856.

[Seal of the City of Watertown, Wisconsin.]

WM. CHAPPELL, *Mayor.*
SAM'L BAIRD, *Clerk.*

Fourth. That said defendant, The City of Watertown, on the first day of June, 1856, made, executed under seal, issued, and

delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

No. 185. UNITED STATES OF AMERICA. $1,000.

STATE OF WISCONSIN, *City of Watertown.*

Issued to aid in the construction of the Watertown and Madison R. R.

Know all men by these presents that the City of Watertown is justly indebted unto and promises to pay Wm. B. Hibbard or bearer the sum of one thousand dollars on the first day of Jan'y, A. D. 1877, at the Bank of North America, in the city of New York, together with interest thereon at the rate of eight per cent. per annum, payable semi-annually on presentation and surrender of the annexed interest warrants or coupons at said bank. For the payment of principal and interest the faith and credit of
25 said city of Watertown are inviolably and irrevocably pledged.

This bond is one of a series of two hundred of the same amount, tenor, and date issued in conformity with an act of the Legislative Assembly of Wisconsin and ordinances of the city of Watertown.

In witness whereof the common council of the city of Watertown hath hereunto caused to be affixed the corporate seal of said city and these presents to be signed by the mayor and countersigned by the clerk of the common council of said city this first day of June, A. D. 1856.

[Seal of the City of Watertown, Wisconsin.]

WM. CHAPPELL, *Mayor.*
SAM'L BAIRD, *Clerk.*

Fifth. That said defendant, The City of Watertown, on the first day of June, 1856, made, executed under seal, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk and was in the words and figures as follows, to wit:

No. 186. UNITED STATES OF AMERICA. $1,000.

STATE OF WISCONSIN, *City of Watertown.*

Issued to aid in the construction of the Watertown and Madison R. R.

Know all men by these presents that the City of Watertown is justly indebted unto and promises to pay Wm. B. Hibbard or bearer the sum of one thousand dollars on the first day of Jan'y, A. D. 1877, at the Bank of North America, in the city of New York, together with interest thereon at the rate of eight per cent. per annum,
26 payable semi-annually on presentation and surrender of the annexed interest warrants or coupons at said bank. For the

payment of principal and interest the faith and credit of said city of Watertown are inviolably and irrevocably pledged.

This bond is one of a series of two hundred, of the same amount, tenor, and date, issued in conformity with an act of the Legislative Assembly of Wisconsin and ordinances of the city of Watertown.

In witness whereof the common council of the city of Watertown hath hereunto caused to be affixed the corporate seal of said city and these presents to be signed by the mayor and countersigned by the clerk of the common council of said city this first day of June, A. D. 1856.

[Seal of the City of Watertown, Wisconsin.]

WM. CHAPPELL, *Mayor.*
SAM'L BAIRD, *Clerk.*

Sixth. That after the said bonds, with the coupons thereto annexed, had been issued in full conformity to law, and before the maturity thereof, one William S. Pierson (since deceased) purchased said above bonds, with such coupons annexed thereto as are hereinafter specifically set forth, for value and became the owner thereof.

Seventh. That since the commencement of this suit, to wit, on the 18th day of April, 1879, said William S. Pierson died, having first made his last will and testament, wherein he appointed said plaintiffs, Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, Herman R. Coffin, executors thereof.

27 Eighth. That said last will and testament of William S. Pierson, deceased, was duly proved and admitted to probate in the probate court, Windsor district, Hartford county, State of Connecticut, on the 28th day of April, 1879, and thereupon these plaintiffs, Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, Herman R. Coffin, entered upon their duties as such executors under said will in accordance with the laws of the State of Connecticut, and ever since such time have been and still are the legally acting executors of the last will and testament of said William S. Pierson, deceased.

Ninth. That, according to the laws of the State of Connecticut, the persons named as executors in a will become the executors thereof by the proof of the will in probate and the admission of the same without the issuance of any letters testamentary.

Tenth. That heretofore, to wit, on the 19th day of June, 1883, a copy of the will of the said William S. Pierson, deceased, with the probate thereof annexed, as required by the laws of Connecticut, duly authenticated as required by law, was duly filed in the county court of Milwaukee county, Wisconsin.

28 Said plaintiffs further allege, as a 1st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1858, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 2nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1858, which said plaintiffs claim and demand judgment therefor.

29 Said plaintiffs further allege, as a 3rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1859, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1859, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 4th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1859, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1859, which said plaintiffs claim and demand judgment therefor.

30 Said plaintiffs further allege, as a 5th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1860, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1860, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 6th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1860, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1860, which said plaintiffs claim and demand judgment therefor.

31 Said plaintiffs further allege, as a 7th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1861, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1861, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 8th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1861, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1861, which said plaintiffs claim and demand judgment therefor.

32 Said plaintiffs further allege, as a 9th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1862, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1862, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 10th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1862, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1862, which said plaintiffs claim and demand judgment therefor.

33 Said plaintiffs further allege, as an 11th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1863, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1863, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 12th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1863, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1863, which said plaintiffs claim and demand judgment therefor.

34 Said plaintiffs further allege, as a 13th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1864, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1864, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 14th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1864, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1864, which said plaintiffs claim and demand judgment therefor.

35 Said plaintiffs further allege, as a 15th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1865, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1865, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 16th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1865, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1865, which said plaintiffs claim and demand judgment therefor.

36 Said plaintiffs further allege, as a 17th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1866, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1866, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 18th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1866, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1866, which said plaintiffs claim and demand judgment therefor.

37 Said plaintiffs further allege, as a 19th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1867, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1867, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 20th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1867, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1867, which said plaintiffs claim and demand judgment therefor.

38 Said plaintiffs further allege, as a 21st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1868, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1868, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 22nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1868, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1868, which said plaintiffs claim and demand judgment therefor.

39 Said plaintiffs further allege, as a 23rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1869, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1869, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 24th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1869, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1869, which said plaintiffs claim and demand judgment therefor.

40 Said plaintiffs further allege, as a 25th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1870, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1870, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 26th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1870, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1870, which said plaintiffs claim and demand judgment therefor.

41 Said plaintiffs further allege, as a 27th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1871, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1871, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 28th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1871, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1871, which said plaintiffs claim and demand judgment therefor.

42 Said plaintiffs further allege, as a 29th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1872, at the bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1872, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 30th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1872, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1872, which said plaintiffs claim and demand judgment therefor.

43 Said plaintiffs further allege, as a 31st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1873, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1873, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 32nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1858, which said plaintiffs claim and demand judgment therefor.

44 Said plaintiffs further allege, as a 33rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1858, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 34th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1859, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1859, which said plaintiffs claim and demand judgment therefor.

45 Said plaintiffs further allege, as a 35th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1859, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1859, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 36th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures, as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1860, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1860, which said plaintiffs claim and demand judgment therefor.

46 Said plaintiffs further allege, as a 37th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1860, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1860, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 38th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1861, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1861, which said plaintiffs claim and demand judgment therefor.

47 Said plaintiffs further allege, as a 39th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1861, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1861, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 40th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1862, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1862, which said plaintiffs claim and demand judgment therefor.

48 Said plaintiffs further allege, as a 41st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1862, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1862, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 42nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1863, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1863, which said plaintiffs claim and demand judgment therefor.

49 Said plaintiffs further allege, as a 43rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1863, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1863, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 44th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1864, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1864, which said plaintiffs claim and demand judgment therefor.

50 Said plaintiffs further allege, as a 45th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1864, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1864, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 46th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1865, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1865, which said plaintiffs claim and demand judgment therefor.

51 Said plaintiffs further allege, as a 47th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1865, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1865, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 48th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1866, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1866, which said plaintiffs claim and demand judgment therefor.

52 Said plaintiffs further aliege, as a 49th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1866, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1866, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 50th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1867, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1867, which said plaintiffs claim and demand judgment therefor.

53 Said plaintiffs further allege, as a 51st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1867, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1867, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 52nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1868, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1868, which said plaintiffs claim and demand judgment therefor.

54 Said plaintiffs further allege, as a 53rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1868, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1868, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 54th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1869, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1869, which said plaintiffs claim and demand judgment therefor.

55 Said plaintiffs further allege, as a 55th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1869, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1869, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 56th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1870, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1870, which said plaintiffs claim and demand judgment therefor.

56 Said plaintiffs further allege, as a 57th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1870, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1870, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 58th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1871, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison Railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1871, which said plaintiffs claim and demand judgment therefor.

57 Said plaintiffs further allege, as a 59th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1871, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1871, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 60th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1872, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1872, which said plaintiffs claim and demand judgment therefor.

58 Said plaintiffs further allege, as a 61st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1872, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1872, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 62nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1873, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 185, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 185, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1873, which said plaintiffs claim and demand judgment therefor.

59 Said plaintiffs further allege, as a 63rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPIN, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1858, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 64th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1858, which said plaintiffs claim and demand judgment therefor.

60 Said plaintiffs further allege, as a 65th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1859, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1859, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 66th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1859, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPIN, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1859, which said plaintiffs claim and demand judgment therefor.

61 Said plaintiffs further allege, as a 67th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1860, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1860, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 68th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1860, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1860, which said plaintiffs claim and demand judgment therefor.

62 Said plaintiffs further allege, as a 69th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1861, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1861, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 70th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1861, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1861, which said plaintiffs claim and demand judgment therefor.

63 Said plaintiffs further allege, as a 71st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1862, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1862, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 72nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1862, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1862, which said plaintiffs claim and demand judgment therefor.

64 Said plaintiffs further allege, as a 73rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1863, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1863, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 74th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1863, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1863, which said plaintiffs claim and demand judgment therefor.

65 Said plaintiffs further allege, as a 75th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1864, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1864, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 76th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1864, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1864, which said plaintiffs claim and demand judgment therefor.

66 Said plaintiffs further allege, as a 77th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1865, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1865, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 78th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1865, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1865, which said plaintiffs claim and demand judgment therefor.

67 Said plaintiffs further allege, as a 79th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1866, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1866, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 80th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1866, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1866, which said plaintiffs claim and demand judgment therefor.

68 Said plaintiffs further allege, as an 81st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1867, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1867, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 82nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1867, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1867, which said plaintiffs claim and demand judgment therefor.

69 Said plaintiffs further allege, as an 83rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1868, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1868, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 84th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1868, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1868, which said plaintiffs claim and demand judgment therefor.

70 Said plaintiffs further allege, as an 85th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1869, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1869, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 86th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1869, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1869, which said plaintiffs claim and demand judgment therefor.

71 Said plaintiffs further allege, as an 87th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1870, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1870, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as an 88th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1870, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1870, which said plaintiffs claim and demand judgment therefor.

72 Said plaintiffs further allege, as an 89th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1871, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1871, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 90th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1871, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1871, which said plaintiffs claim and demand judgment therefor.

73 Said plaintiffs further allege, as a 91st cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1872, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1872, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 92nd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of July, 1872, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of July, 1872, which said plaintiffs claim and demand judgment therefor.

74 Said plaintiffs further allege, as a 93rd cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1873, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 186, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 186, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1873, which said plaintiffs claim and demand judgment therefor.

Said plaintiffs further allege, as a 94th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 187, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 187, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1858, which said plaintiffs claim and demand judgment therefor.

75 Said plaintiffs further allege, as a 95th cause of action against said defendant, The City of Watertown, as follows, to wit:

That said defendant, The City of Watertown, on the first day of June, A. D. 1856, made, executed, issued, and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to wit:

$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1858, at the Bank of North America, in the city of New York, on presentation hereof, being the interest due that day on bond of city, No. 188, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 188, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1858, which said plaintiffs claim and demand judgment therefor.

76 Wherefore said plaintiffs demand judgment against said defendant, The City of Watertown, as follows, to wit:

For $40, with interest at 7 per ct. from Jan'y 1st, 1858.
" " " " " "
" " " " " "
" " " July " 1858.
" " " Jan'y " 1859.
" " " July " 1859.
" " " Jan'y " 1860.
" " " July " 1860.
" " " Jan'y " 1861.
" " " July " 1861.
" " " Jan'y " 1862.
" " " July " 1862.
" " " Jan'y " 1863.
" " " July " 1863.
" " " Jan'y " 1864.
" " " July " 1864.
" " " Jan'y " 1865.
" " " July " 1865.
" " " Jan'y " 1866.
" " " July " 1866.
" " " Jan'y " 1867.
" " " July " 1867.
" " " Jan'y " 1868.
" " " July " 1868.
" " " Jan'y " 1869.
" " " July " 1869.
" " " Jan'y " 1870.

77 For $40, with interest at 7 per ct. from July 1st, 1870.
" " " Jan'y " 1871.
For $40, with interest at 7 per ct. from July 1st, 1871.
" " " Jan'y " 1872.
" " " July " 1872.

For $40, with interest at 7 per ct. from Jan'y 1st, 1873.
" " " Jan'y " 1858.
" " " July " 1858.
" " " Jan'y " 1859.
" " " July " 1859.
" " " Jan'y " 1860.
" " " July " 1860.
" " " Jan'y " 1861.
" " " July " 1861.
" " " Jan'y " 1862.
" " " July " 1862.
" " " Jan'y " 1863.
" " " July " 1863.
" " " Jan'y " 1864.
" " " July " 1864.
" " " Jan'y " 1865.
" " " July " 1865.
" " " Jan'y " 1866.
" " " July " 1866.
" " " Jan'y " 1867.
" " " July " 1867.
" " " Jan'y " 1868.
" " " July " 1868.
" " " Jan'y " 1869.

78 For $40, with interest at 7 per ct. from July 1st, 1869.
" " " Jan'y " 1870.

For $40, with interest at 7 per ct. from July 1st, 1870.
" " " Jan'y " 1871.
" " " July " 1871.
" " " Jan'y " 1872.
" " " July " 1872.
" " " Jan'y " 1873.
" " " Jan'y " 1858.
" " " July " 1858.
" " " Jan'y " 1859.
" " " July " 1859.
" " " Jan'y " 1860.
" " " July " 1860.
" " " Jan'y " 1861.
" " " July " 1861.
" " " Jan'y " 1862.
" " " July " 1862.
" " " Jan'y " 1863.
" " " July " 1863.
" " " Jan'y " 1864.
" " " July " 1864.
" " " Jan'y " 1865.
" " " July " 1865.
" " " Jan'y " 1866.
" " " July " 1866.
" " " Jan'y " 1867.

For $40, with interest at 7 per ct. from July 1st, 1867.
" " " Jan'y " 1868.
79 For $40, with interest at 7 per ct. from July 1st, 1868.
" " " Jan'y " 1869.
For $40, with interest at 7 per ct. from July 1st, 1869.
" " " Jan'y " 1870.
" " " July " 1870.
" " " Jan'y " 1871.
" " " July " 1871.
" " " Jan'y " 1872.
" " " July " 1872.
" " " Jan'y " 1873.

And for costs and disbursements of the plaintiffs in this action incurred.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

80 STATE OF WISCONSIN, }
County of Milwaukee, } *ss:*

Benjamin K. Miller, being first duly sworn, deposes and says that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge; that he is the attorney of the plaintiffs and makes this verification on their behalf; that the above-entitled action is an action founded on written instruments for the payment of money only, and that such instruments are in the possession of this deponent; that all the allegations of the complaint are within the personal knowledge of this deponent; that the above complaint is not verified by the plaintiffs or by either of them for the reasons that they and each of them are non-residents and are not now within the State of Wisconsin, and because all the allegations of the complaint are within the personal knowledge of this deponent; that the knowledge of this deponent is derived from the laws of Wisconsin, from the written instruments upon which this suit is brought, and from personal communications received by him from the plaintiffs whilst acting as their attorney.

B. K. MILLER.

Subscribed and sworn to before me this 19th day of June, A. D. 1883.

[NOTARIAL SEAL.] GEO. P. MILLER,
Notary Public, Milwaukee County, Wisconsin.

81 Whereupon the summons was issued as follows, viz:

Summons.

Circuit Court of the United States for the Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, & Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

Summons for money demand.

The United States of America to the above-named defendant:

You are hereby summoned and required to answer the complaint of Rufus P. Spalding *et al.*, the plaintiffs in this action, which will be filed in the office of the clerk of this court, at Madison, in said district, and you are required to file your answer thereto with the clerk of this court, at Madison, and to serve a copy thereof on the attorneys of the plaintiffs, whose names are subscribed hereto, at their office, in Milwaukee, Wisconsin, within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the complaint as aforesaid the plaintiffs will take judgment against you for the sum of three thousand eight hundred dollars, with interest on $200 of that sum from
82 and since January 1, 1858, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1858, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1859, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1859, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1860, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1860, at 7 per cent per annum, and also with interest on $120 of that sum from and since January 1, 1861, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1861, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1862, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1862, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1863, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1863, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1864, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1864, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1865, at seven per cent. per annum, and also on $120 of that sum from and since July 1, 1865, at seven per cent. per annum, and also with
83 interest on $120 of that sum from and since January 1, 1866,

at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1866, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1867, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1867, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1868, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1868, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1869, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1869, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1870, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1870, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1871, at seven per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1871, at seven per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1872, at 7 per cent. per annum, and also with interest on $120 of that sum from and since July 1, 1872, at 7 per cent. per annum, and also with interest on $120 of that sum from and since January 1, 1873, at seven per cent. per annum, besides the costs of this action.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Madison,
84 in said western district of Wisconsin, this 3d day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

[L. S.] F. M. STEWART, *Clerk.*

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys, 102 *Wisconsin St., Milwaukee, Wis.*

The service whereof appears by the marshal's return endorsed thereon as follows:

Service.

Served the within summons on the City of Watertown by delivering a copy thereof to Henry Bieber, city clerk, and also a copy thereof to Charles H. Gardner, city attorney, and a copy thereof to Fred. Kusel, the last elected chairman of the board of street commissioners of said city, this 26th day of June, 1883, the office of mayor of said city being vacant and their being no president of the common council nor presiding officer thereof in office.

F. W. OAKLEY, *U. S. M.*,
By W. S. MAIN, *Deputy.*

Fees:

Service on 3	$6 00
Copies	3 60
Travel	2 40
	$12 00

85 And came the defendants, by its attorneys, Geo. W. Bird and Daniel Hall, and filed its appearance herein as follows, viz:

Appearance.

Circuit Court of the United States for the Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. ALLEN, and HERMAN R. COFFIN, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

against

THE CITY OF WATERTOWN, Defendant.

To Mess. Finches, Lynde & Miller, attorneys for pl'ffs:

Please take notice that we are retained by and appear for the defendant, The City of Watertown, in the above-entitled action, and we demand that a copy of the plaintiffs' complaint therein be served upon us at the office of Hall & Skinner, in the fourth ward of the city of Watertown, Jefferson Co., Wis.

Yours, &c.,

GEO. W. BIRD AND
DANIEL HALL,
Attorneys for Defendant.

Dated Watertown, Wis., July 14, 1883.

P. O. address, Watertown, Wis.

And came the plaintiffs, by their attorneys, and filed proof of service of complaint as follows, viz:

86 *Admission of Service.*

United States Circuit Court, Western District of Wisconsin.

RUFUS P. SPALDING *et al. vs.* CITY OF WATERTOWN.

Personal service of a copy of amended complaint in above cause admitted.

August 20, 1883.

GEO. W. BIRD AND D. HALL,
Def't's Att'ys.

And afterwards, to wit, on the 20th day of August, A. D. 1883, came the defendant and filed its answer as follows, viz:

Answer.

Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, & Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

The City of Watertown, the defendant in the above-entitled action, by its attorneys, George W. Bird and Daniel Hall, answering
87 the supplemental complaint of the plaintiffs in said action, alleges and respectfully shows to the court—

First. For a first defense to said action and to each and every cause of action stated in said complaint, the said defendant denies that it has any knowledge or information sufficient to form a belief as to whether said William S. Pierson, mentioned in said complaint, ever purchased or became the owner of the bonds or any or either of them set forth in said complaint or of the interest warrants or coupons therein set forth or any or either of them, or as to whether the plaintiffs are or ever have been the owners or holders of said coupons or any or either of them, or as to whether the said William S. Pierson died on the 18th day of April, 1879, or since the commencement of this suit, or whether he died leaving a last will and testament wherein he appointed said plaintiffs, Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, executors thereof, or as to whether said Pierson's will was admitted to probate or said plaintiffs ever entered upon the duties of executors or acting executors of the last will and testament of William S. Pierson, deceased, or as to whether a copy of said Pierson's will with the probate thereof annexed or otherwise was ever filed in the county court of Milwaukee county, Wisconsin.

Second. For a second defense to said action and to each and every cause of action stated in said complaint, the said defendant, upon information and belief, further alleges that the said several causes of action stated in said complaint did not nor did any or either
88 of them accrue within six years next before the commencement of this action, and that this action was not commenced within the six years limited by law for the commencement thereof, and was not brought or commenced within one year after the act of the Legislature of the State of Wisconsin entitled "An act to limit the time for the commencement of actions against towns, counties, cities, and villages, or demands made payable to bearer," approved March 9, 1872, took effect, and was not commenced prior to the month of June, 1883, within the meaning of any provision of law of said State which limits the time for the commencement of an action, and was and is barred by the statute of limitations of the said State of Wisconsin.

That as to all the bonds and coupons described and set forth in

said complaint and as to each and every one of said bonds and coupons the defendant saith the said several causes of action in said complaint stated did not accrue thereon within the six years next prior to the commencement of this action; that this action was not commenced within one year after the said act of the Legislature of Wisconsin took effect nor before the month of June, 1883, within the meaning of any provision of law of said State which limits the time for the commencement of an action, and that action on the said bonds and coupons and on each of said bonds and each of said coupons was and is barred by the statute of limitations of said State of Wisconsin.

Wherefore the defendant demands judgment that the plaintiffs take nothing by this action, and that the defendant go thereof without day, and for costs.

GEO. W. BIRD AND DANIEL HALL,
89 *Def't's Att'ys.*

WESTERN DISTRICT OF WISCONSIN, *ss:*

Henry Bieber, being duly sworn, deposes and says that he has heard the foregoing answer read and knows the contents, and that the same is true of his own knowledge, except as to the matters stated therein on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why the verification is not made by the defendant is that defendant is a corporation; that this deponent is an officer of the same, to wit, the city clerk thereof, and that his knowledge is derived from the laws of Wisconsin and documents in his possession as such city clerk, and that the grounds of his belief are such laws and documents and information communicated to him by the officers and agents of said corporation.

HENRY BIEBER.

Subscribed and sworn to this 7th day of August, A. D. 1883, before me—

C. B. SKINNER,
U. S. Court Commissioner for Western Dist. of Wisconsin.

Endorsed: Due service of within answer on us by copy thereof admitted this 15th day of August, 1883. Finches, Lynde & Miller, pl'ffs' att'ys.

90 And afterwards, to wit, on the 21st day of August, 1883, came the said plaintiffs and filed their amended complaint as follows, to wit:

Amended Complaint.

Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

Now come the above-named plaintiffs, by Finches, Lynde and Miller, their attorneys, and amend, as of course, their complaint heretofore served and filed in the above-entitled cause by making the following additions thereto, to wit:

First. After paragraph tenth of said complaint add the following allegations:

Said plaintiffs allege, on information and belief, that said defendant, The City of Watertown, and the officers, agents, citizens, and residents of said city did, subsequent to the 1st day of March, A. D. 1873, conspire together and with each other, and ever since have conspired together and with each other, for the purpose and with the preconceived intent and design to defraud these plain-
91 tiffs and all other owners and holders of the bonds and coupons to such bonds issued by said city and to prevent these plaintiffs and the other owners and holders of said bonds and coupons from obtaining the service of process on said city.

Said plaintiffs further allege, on information and belief, that each year since the 1st day of March, 1873, a mayor of said city was elected, as required by law, but said mayor each year, with the intent and design aforesaid, qualified as hereinafter mentioned and immediately thereafter placed his resignation in the hands of the city clerk of said city, to be filed by him in case of emergency and to take effect accordingly.

Said plaintiffs further allege, on information and belief, that each year since the 1st day of March, 1873, after the mayor and members of the common council had been elected, they and each of them failed to qualify until they had assembled together in a secret place with locked doors, unknown to the people at large and to these plaintiffs, and with persons on watch to inform them of the approach of any person or persons, and then and there, if unmolested, the mayor and members of the common council, qualified as required by law, transacted for said defendant city certain necessary business and thereafter immediately filed with the city clerk of said city their respective resignations, to take effect immediately, and which resignations went immediately into effect.

Said plaintiffs further allege that since the 1st day of March, 1873, they have employed attorneys and agents for the purpose of ascertaining who was the mayor or acting mayor or chairman of the common council or chairman of the board of street
92 commissioners and for the purpose of having process served on said city; but owing to said conspiracy, as these plaintiffs

are informed and believe, since the 1st day of March, 1873, there has been no mayor of said city, except each year for a few hours at such secret and concealed meetings, and the common council of said city, with said fraudulent intent and design, has failed each year to elect a chairman of said common council, and since said last-mentioned date there has been no person who was acting mayor and no chairman of the board of street commissioners.

Said plaintiffs further allege that in the above-entitled action said William S. Pierson, deceased, on or about the 1st day of March, 1873, filed a præcipe for a summons and an undertaking for costs, and a summons was issued in due conformity to law and placed in the hands of the United States marshal for service, and that on or about March 2, 1873, the said marshal, after due and diligent search and inquiry, served the said summons on those persons whom, according to the best information he could derive, he had ascertained to be the mayor and city clerk of the city of Watertown, and on the same day returned the said summons as served according to law; that on March 25th, 1873, the said city of Watertown appeared specially in said action for the purpose of moving to set aside the service of said summons on the ground that the persons on whom said summons had been served were not, in fact, the mayor and city clerk of said city;
93 that on April 8th, 1873, the said motion came on to be heard, and this court ordered that the service of said summons be set aside for the reason that the persons so served were not the mayor and city clerk of said city, and ordered that the said summons be returned to said marshal to be served according to law; that since said date the said marshal has not been able to ascertain who were the mayor and city clerk or mayor or city clerk of said city or the persons on whom process could be served.

Said plaintiffs further allege that, notwithstanding they have used due diligence and have hired attorneys and agents for the purpose of having process served on said city, they have been unable to this date to serve or have served the summons in this action on the mayor of said city or on any person who by law should exercise the functions of mayor of said city.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

STATE OF WISCONSIN, }
County of Milwaukee, } ss:

Benjamin K. Miller, being duly sworn, deposes and says that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except those matters therein alleged on information and belief and as to those matters he believes it to be true; that he is the attorney of the plaintiffs and makes this verification on their behalf; that the above-entitled action is an action founded on written instruments
94 for the payment of money only, and that such instruments are in the possession of this deponent; that all the allegations of the amended complaint are within the personal knowledge of this deponent, except those alleged on information and belief;

that the above amended complaint is not verified by the plaintiffs or either of them for the reason that they and each of them are non-residents and are not now within the State of Wisconsin, and because all the allegations of the amended complaint are within the personal knowledge of this deponent, except such as are made on information and belief; that the knowledge of this deponent is derived from the laws of Wisconsin, from the written instruments on which this suit is brought, and from personal communications received by him from the plaintiffs whilst acting as their attorney, and the grounds of his belief are derived from information from the United States marshal for the western district of Wisconsin, E. Mariner, and other persons who have attempted to serve process on the city of Watertown.

B. K. MILLER.

Subscribed and sworn to before me this 18th day of August, A. D. 1883.

[SEAL.] GEO. P. MILLER,
Notary Public, Milwaukee County, Wisconsin.

And on the 1st day of November, A. D. 1883, thereafter, came parties and filed stipulation as follows, viz:

Stipulation.

95 Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

It is hereby stipulated by and between the said parties that said defendant may answer the plaintiffs' additions and amendments to their complaint served in said action or any part thereof by general or specific averments or denials, or any or all of them, as it may choose, and that such answer thereto, together with defendant's former answer to said plaintiffs' complaint, heretofore served and now on file in said action, shall both stand and together be the said defendant's answer to the whole of said plaintiffs' complaint as added to and amended as aforesaid.

Dated October 26th, 1883.

FINCHES, LYNDE & MILLER,
Pl'ffs' Att'ys.
GEO. W. BIRD AND D. HALL,
D'f't's Att'ys.

Endorsed: Due service of the answer to the within-named additions and amendments pursuant to this stipulation admitted this 26th day of October, 1883. Finches, Lynde & Miller, pl'ffs'
96 att'ys.

And on said 1st day of November, A. D. 1883, said defendant filed its answer to the amended complaint as follows, viz:

Answer to Amended Complaint.

Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendants.

The answer of the above-named defendant to the additions and amendments made by the plaintiffs to their complaint first served in the above-entitled action, by D. Hall and Geo. W. Bird, its attorneys, respectfully shows unto this hon. court—

First. That said defendant has not sufficient knowledge or information to form a belief as to whether the said plaintiffs, since the first day of March, 1873, or at any other time or times, have employed attorneys and agents or either for the purpose of ascertaining who was the mayor or acting mayor or chairman of the common council or chairman of the board of street commissioners for
97 the purpose of having process served on said city.

Second. The said defendant admits that the said William S. Pierson, deceased, did, at the time alleged, attempt to commence suit against said defendant, and to that end took the measures and proceedings alleged in said amendments and additions, but failed to commence the same or get service upon said city in the manner therein stated, as was decided by said court upon the proceedings therein set forth, and that each year since the 1st day of March, 1873, a mayor of said city has been duly elected.

Third. That, except the averments above answered, said defendant denies each and every allegation in said amendments and additions to said complaint contained.

Fourth. The said defendant insists upon all the defenses to said action heretofore stated, interposed, and set up in its answer to said complaint in said action, which last-named answer has been heretofore served and is now on file in said action, the same as if said last-named answer and defenses were now repeated here.

GEO. W. BIRD & D. HALL,
Def't's Att'ys.

WESTERN DISTRICT OF WISCONSIN, *ss:*

Henry Bieber, being duly sworn, deposes and says that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the
98 matters therein stated on information and belief, and as to those matters he believes it to be true. The deponent further says that the reason why the verification is not made by the defend-

ant is that the defendant is a corporation; that this deponent is an officer of the same, to wit, that he is city clerk of said defendant, The City of Watertown, and that his knowledge is derived from the laws of Wisconsin, documents in his possession as such city clerk, and his own observation, and that the grounds of his belief are such laws, documents, and observations and information communicated to him by the officers and agents of said corporation.

HENRY BIEBER.

Subscribed and sworn to before me this 24th day of October, A. D. 1883.

C. B. SKINNER,
U. S. Court Commissioner for Western Dist. of Wis.

And afterward and on the 27th day of November, A. D. 1883, came the plaintiffs and filed demurrer as follows:

Demurrer.

United States Circuit Court, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, & Herman R. Coffin, Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

against

99 THE CITY OF WATERTOWN, Defendant.

Now come the above-named plaintiffs, by Finches, Lynde & Miller, their attorneys, and demur to the second defense in the defendant's amended answer contained, to wit, to the defense of the statute of limitations, for the reason that it appears upon the face thereof that it does not state facts sufficient to constitute a defense.

FINCHES, LYNDE & MILLER,
Attorneys for Plaintiffs.

Endorsed: Due and personal service of the within admitted this 24th day of November, 1883. D. Hall and Geo. W. Bird, def't's att'ys.

And came said defendant, by its attorneys, and filed amended answer to amended complaint as follows, viz:

Amended Answer to Amended Complaint.

Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

100 The City of Watertown, the defendant in the above-entitled action, by its attorneys, George W. Bird and Daniel Hall,

answering the amended complaint of the plaintiffs in this action by this its amended answer, alleges and respectfully shows to the court—

First. The said defendant denies each and every allegation in the said amended complaint contained except so much and such parts thereof as are hereinafter expressly admitted to be true or are otherwise specifically answered.

Second. This defendant admits the residence and citizenship of the parties, the corporate character and authority of the defendant, the execution and non-payment by it of the bonds and coupons alleged in said amended complaint; also that each year since the first day of March, 1873, a mayor of said city was elected, as required by law.

Third. But this the said defendant denies, that it has any knowledge or information sufficient to form a belief as to whether said William S. Pierson, mentioned in said amended complaint, ever purchased or became the owner of the bonds or any or either of them set forth in said amended complaint, or of the interest warrant- or coupons or of any or either of them set forth, or as to whether the plaintiffs are or ever have been the owners or holders of said bonds, interest warrants, or coupons or of any or either of them, or as to whether the said William S. Pierson died on the 18th day of April, 1879, or at any other time, or as to whether he died leaving a last will and testament, wherein he appointed said plaintiffs, Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R.
101 Allen, & Herman R. Coffin, executors thereof, or as to whether said Pierson's will was admitted to probate, or said plaintiffs ever entered upon the duties of executors of said Pierson's will, or are now or ever have been the executors or acting executors of the last will and testament of said William S. Pierson, or whether a copy of said Pierson's will with the probate thereof annexed or otherwise was ever filed in the county court of Milwaukee county, Wisconsin, or as to whether plaintiffs have employed attorneys or agents or any or either of them for the purpose of ascertaining who was the mayor or acting mayor or chairman of the common council or chairman of the board of street commissioners, or for the purpose of having process served on said city.

Fourth. And, further answering said amended complaint, this the said defendant alleges, that said William S. Pierson, on or about the 1st day of March, 1873, filed an undertaking for costs and a præcipe for a summons with the clerk of this court, wherein the said William S. Pierson was named as plaintiff and this defendant as defendant; that on or about the 3d day of March, 1873, a summons was issued out of said court pursuant to said præcipe and placed in the hands of the marshal of the United States for said district to be served, and that on or about the 6th day of March, 1873, the marshal returned the said summons to said court, with the return thereon endorsed, in the words and figures following, to wit: "Served on the within-named The City of Watertown by delivering to August Tauck, city clerk, and Fred. Meyer, city treasurer, of said city of
102 Watertown, personally each a copy of the within summons this March 6, 1873;" that on or about the 9th day of April,

1873, upon the motion of the defendant, appearing specially and only to have said service set aside and to object to the jurisdiction of said court on the ground of the illegality of such pretended service, the said court in relation thereto made its order thereon in the following words, to wit: "After hearing Mr. Pease, for Watertown, and Mr. Finch, opposed, and it appearing from the return of the marshal endorsed on the summons filed in this case that the summons has not been served on the defendant in the manner prescribed by law, so as to give the court jurisdiction of the defendant, or so as to entertain any motion or proceeding in the case as against said defendant or on its behalf, the motion is denied and the clerk authorized to return said summons to the marshal to be served on the defendant according to law, or for such further action as the plaintiff may direct conformably to law;" that no other summons was issued out of said court in or about the year 1873, or at any other time since, against this defendant wherein said William S. Pierson was named plaintiff, and that said summons was not served on the said defendant at any time within sixty days after the making of the said order as aforesaid, nor within sixty days after the same summons was placed in the hands of said marshal as aforesaid to be served nor at any other time.

103 And this defendant, further answering, avers & alleges that said last-named summons against this defendant is the identical and only summons named or mentioned in the said amended complaint wherein the said William S. Pierson was named as plaintiff, and that the same has never been served on this defendant, and that no copy thereof has ever been delivered — or left with the mayor nor to any mayor or acting mayor of said city of Watertown, and that neither on the 18th day of April, 1879, the time of said alleged decease of said William S. Pierson, nor at any time before or since then, was, had, or has the action attempted to be commenced by the service of the summons last above named been commenced or existing or pending in this court against the said city of Watertown.

And this defendant, further answering, avers and alleges that this the first above-entitled action against this defendant was commenced on or about and not before the 19th day of June, 1883, by the delivery on the said 19th day of June, 1883, or soon thereafter, to the United States marshal of said district of the summons herein to be served, wherein the said Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, & Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, are named as plaintiffs and this defendant is named as the defendant therein, and that on or about the 26th day of June, 1883, the said marshal made the delivery of copies thereof, of which he made the return thereon endorsed, which is now on file in this action, and that on the 16th day of July, 1883, this defendant duly appeared

104 herein and fully submitted itself to the jurisdiction of said court from and after the day and year last aforesaid. And this defendant, upon information and belief, avers and alleges that the plaintiffs in this the above-entitled action never attempted

the commencement thereof before the said 19th day of June, 1883, and never used any diligence whatever to commence the same before said 19th day of June, A. D. 1883.

Fifth. And this the said defendant, for a further and separate defense, which it will insist upon herein to said action and to the whole thereof and to each and every cause of action set forth in said amended complaint, avers and alleges, that neither the said action nor any of the causes of action stated in said amended complaint accrued within the six years next before the said 19th day of June, 1883, nor on nor since the day and year last aforesaid; that on or after and not before the said 19th day of June, 1883, the summons herein last above mentioned was first delivered to the United States marshal for service or to be served on this defendant, and that the same never was or had been delivered to such marshal or to any officer or person for service or to be served on this defendant or otherwise before said 19th day of June, 1883; and that neither this said action nor any of the causes of action in the said amended complaint stated nor any part thereof accrued within six years before the commencement of this the above-entitled action, and that the said action was not commenced before the said 19th day of June, A. D. 1883, nor was it commenced within the six years limited by law for the com-
105 mencement thereof after the same accrued and is barred, the whole thereof, by the statutes of limitations of the State of Wisconsin; that as to all the bonds, interest warrants, and coupons described in said amended complaint and as to each and every one of said bonds, interest warrants, and coupons the said defendant saith and avers that each and all of said several causes of action in said amended complaint stated did not nor did any or either of them accrue thereon within the six years next before the commencement of this action, and that this said action and the whole and every part thereof is barred by the statute of limitations of the State of Wisconsin.

GEO. W. BIRD AND DANIEL HALL,
Def't's Att'ys.

WESTERN DISTRICT OF WISCONSIN, *ss:*

Henry Bieber, being duly sworn, deposes and says that he has heard read the foregoing amended answer and knows its contents; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the defendant is that the defendant is a corporation; that this deponent is an officer of the same, to wit, that he is the city clerk thereof, and that his knowledge is derived from the laws of Wisconsin, documents in his possession as such city clerk, and his own observation, and that the grounds of his belief are such
106 laws, documents, and observation and information communicated to him by the officers and agents of said defendant.

HENRY BIEBER.

Subscribed and sworn to before me this 28th day of December, 1883.

C. B. SKINNER,
U. S. Court Commissioner for Western Dist. of Wisconsin.

And thereafter, on the 8th day of January, A. D. 1884, came plaintiffs and filed demurrer as follows, viz:

Demurrer.

United States Circuit Court, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

Now come the above-named plaintiffs, by Finches, Lynde and Miller, their attorneys, and demur to the defense in the defendant's amended answer contained, to wit, to the defense of the statute of limitations, for the reason that it appears upon the face thereof that it does not state facts sufficient to constitute a defense.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

107 Endorsed: Personal service of the within admitted this 2d day of January, 1884. Geo. W. Bird and D. Hall, def't's att'ys.

And in the record of proceedings aforesaid in said entitled cause and on the 27th day of August, in the June term, A. D. 1884, of said court appears the following entry, to wit:

Order Overruling Demurrer.

RUFUS P. SPALDING *et al.*, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

It is ordered that the demurrer to the plea of the statute of limitations set up in defendant's amended answer to amended complaint be, and the same hereby is, overruled.

It is further ordered that plaintiffs be, and are hereby, allowed twenty days in which to file such new and further pleadings as they may be advised is proper, or in default thereof judgment will go for the defendant.

And afterwards and on said 2d day of December, 1884, came the defendant, by its attorneys, and filed affidavit of default as follows, viz:

108 *Affidavit of Default.*

WESTERN DISTRICT OF WISCONSIN, *ss:*

Circuit Court of the United States for the Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

George W. Bird, being duly sworn, deposes and says that he is one of the attorneys for the defendant in the above-entitled action; that on the 26th day of August, 1884, plaintiffs' demurrer to the defendant's plea of the statute of limitations herein was overruled by the court and the plaintiffs allowed twenty days in which to file such new or further pleadings as they might be advised would be proper, and in default thereof judgment was ordered to go for the defendant; that no new or further pleading has been filed herein or served upon the said defendant's attorneys or either of them, except that an amended complaint was served upon said defendant's attorneys on the 11th day of September, 1884, and withdrawn by plaintiffs on the 15th day of September, 1884, and the said plaintiffs are now in default herein for not filing or serving a new or further pleading herein.

GEO. W. BIRD.

Subscribed and sworn to this 13th day of November, A. D. 1883, before me—

109 R. B. KIRKLAND,
Notary Public, Jefferson Co., Wis.

And also on the same day filed the following notice of application for judgment, to wit:

Notice.

Circuit Court of the United States, Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

To Messrs. Finches, Lynde & Miller, plaintiffs' attorneys.

GENTLEMEN: Please to take notice that upon the affidavit hereto attached, and upon the papers, pleadings, and proceedings herein, and upon the records, books, and files herein of the clerk of this court

we shall apply to said court, at the United States court-room, in the city of Madison, Wis., on the 2d day of December, 1884, at the opening of court on that day, or as soon thereafter as counsel can be heard, for judgment in favor of the defendant and against the plaintiffs herein.

110 Yours, &c.,

GEO. W. BIRD,
D. HALL,
Defendant's Att'ys.

Dated November 14, 1884.

Endorsed: Due service of within notice and affidavit admitted this 19th day of November, 1884. Finches, Lynde & Miller, plaintiffs' attorneys.

And in the record of proceedings aforesaid in said entitled cause, on said 2d day of December, A. D. 1884, appears the following entry, to wit:

Judgment.

Circuit Court of the United States for the Western District of Wisconsin.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, as Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs,

vs.

CITY OF WATERTOWN, Defendant.

A copy of the summons in the above-entitled action having been delivered by the marshal on the 26th day of June, 1883, to the city clerk, city attorney, and the last elected chairman of the board of street commissioners of the defendant city, and the defend-

111 ant having, on the 16th day of July, 1883, served on plaintiffs' attorneys a written notice of appearance and demand of a copy of the complaint, and having then and thereby duly appeared, by its attorneys, George W. Bird and Daniel Hall, and the plaintiffs having thereafter duly served and filed their complaint, and the defendant having thereafter duly served and filed its answer to said complaint, pleading, among other things, that this action was not commenced within the six years limited therefor by the statute of limitations of the State of Wisconsin and is barred by said statute; and the plaintiffs having thereafter duly served and filed an amendment to their said complaint, wherein they alleged certain facts in avoidance of defendant's said plea of the statute of limitations; and the defendant having thereafter duly served and filed its amended answer to plaintiffs' complaint as thus amended, wherein defendant pleads, among other things, that this action was not commenced within the six years limited therefor by the statute of limitations of the State of Wisconsin and is therefore barred by said statute; and the plaintiffs having thereafter duly served and filed their demurrer to the defend-

ant's said plea of the statute of limitations contained in said amended answer on the ground that said plea did not state facts sufficient to constitute a defense, and the issue thus joined by said demurrer having been duly brought to trial at the June term of this court for the year 1884, and having then been tried by the court without a jury, and the court having then found and decided said issue in favor of the defendant and having overruled plaintiffs' said demurrer and having allowed them twenty days in which to file such new
112 or further pleading as they might be advised would be proper, and in default thereof ordered judgment to go for the defendant; and the defendant having, on the 19th day of November, 1884, duly served on plaintiffs' attorneys notice of application for judgment, together with an affidavit showing that no new or further pleading had been filed by the plaintiffs; and said application having duly come on to be heard on the first day of the December term, 1884, of this court, to wit, on the 2d day of December, A. D. 1884, and no one appearing to oppose the same; and it appearing that no new or further pleading has been filed by the plaintiffs, and that the defendant is entitled to judgment herein upon the said issue of law:

Now, therefore, on motion of George W. Bird and Daniel Hall, attorneys for the defendant, it is adjudged that this action was not commenced within the six years limited by law for the commencement thereof, and is barred by said statute of limitations of the State of Wisconsin.

And it is further adjudged that the plaintiffs take nothing by this action, and that the defendant go thereof without day, and that the defendant, The City of Watertown, do have and recover of the plaintiffs, Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, as executors of the last will and testament of William S. Pierson, deceased, the sum of sixty dollars and seventy cents, its costs and disbursements of this action as duly taxed, and that it have execution therefor.

Dated Madison, Wis., this 2d day of December, A. D. 1884.

113 By the court.

Judgment-roll signed December 2, A. D. 1884.

F. M. STEWART, *Clerk.*

114 Supreme Court of the United States.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN D. DEXTER, BENNETT R. Allen, and Herman R. Coffin, Executors of the Last Will and Testament of William S. Pierson, Deceased, Plaintiffs in Error,

vs.

CITY OF WATERTOWN, Defendant in Error.

Know all men by these presents that we, Benjamin K. Miller and William H. Miller, are held and firmly bound unto the City of Watertown in the full and just sum of five hundred dollars, to be paid to the said City of Watertown, its successors or assigns; to which pay-

ment, well and truly to be made and done, we do bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15 day of October, A. D. 1885.

Whereas the above-named Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the western district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the said Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter,
115 Bennett R. Allen, and Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, shall prosecute their said writ of error to effect and answer all damages and costs that may be assessed against them if they shall fail to make good their said plea, then this obligation to be void; otherwise valid.

B. K. MILLER. [SEAL.]
W. H. MILLER. [SEAL.]

116 UNITED STATES OF AMERICA, *ss:*

To the City of Watertown, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America to be holden at Washington, in the District of Columbia, on the second Monday, being the 12th day, of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Wisconsin, wherein Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, executors of the last will and testament of William S. Pierson, deceased, are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Madison, in said district, this 12th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

R. BUNN,
Dist. Judge.

I accept service of above citation this 15th day of October, 1885.

GEO. W. BIRD,
DANIEL HALL,
Attorney for Defendant, The City of Watertown.

117 UNITED STATES OF AMERICA, *Western District of Wisconsin,* } ss:

I, F. M. Stewart, clerk of the district court of the United States of America for the western district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with the originals now in my custody, and they are true copies of their respective originals and are correct transcripts therefrom and of the whole thereof now on file and remaining of record in my office, and also the original writ of error, security on writ of error, and citation in above cause.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said western district of Wisconsin, this 12th day of October, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the said United States the 110th.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

Endorsed on cover: W. Wisconsin C. C. U. S. No. 200. Rufus P. Spalding, Samuel H. Allen, Edwin D. Dexter, Bennett R. Allen, and Herman R. Coffin, executors of William S. Pierson, deceased, plaintiffs in error, *vs.* The City of Watertown. Filed November 9, 1885.

Supreme Court U. S.
FILED,
MAR 5 1889
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 200, also (Nos. 197, 198, 199 and 201).

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN P. DEXTER, BENNETT R. ALLEN and HERMAN R. COFFIN, Executors of WILLIAM S. PIERSON, Deceased, Plaintiffs in Error,

vs.

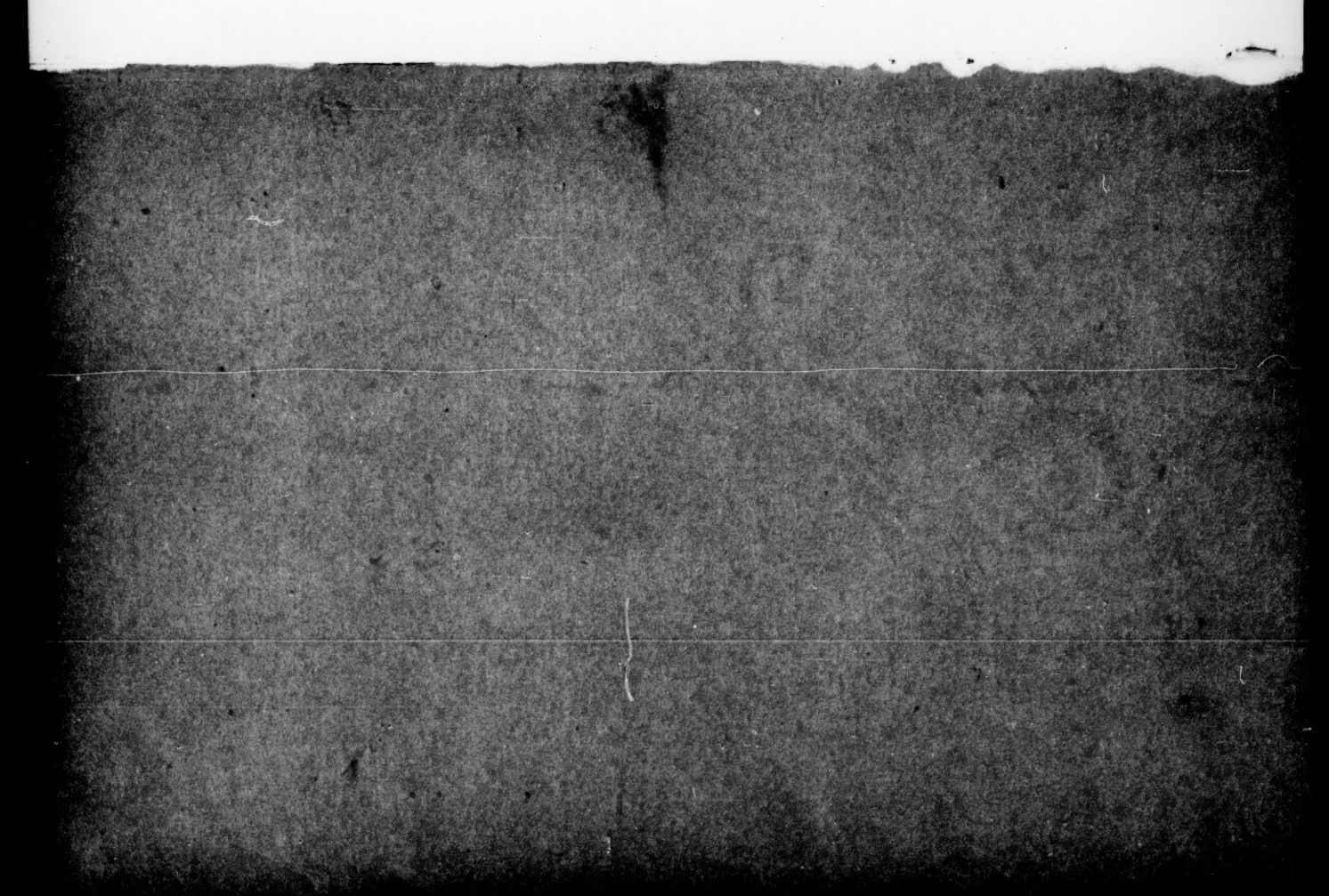
THE CITY OF WATERTOWN, Defendant in Error

ARGUMENT OF PLAINTIFFS IN ERROR.

GEORGE P. MILLER,
Of Counsel for Plaintiffs.

FINCHES, LYNDE & MILLER,
Attorneys for Plaintiffs.

CRAMER, ARENS & CRAMER, ENGRAVERS & PRINTERS, MILWAUKEE.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN P. DEXTER, BENNETT R. ALLEN AND HERMAN R. COFFIN, Executors of WILLIAM S. PIERSON, deceased, Plaintiffs in Error, *vs.* THE CITY OF WATERTOWN, Defendant in Error.	No. 200, also (Nos. 197, 198, 199 & 201.)*

STATEMENT OF THE FACTS AND OF THE RECORD.

On March 3, 1873, William S. Pierson, since deceased, filed a *præcipe* for a summons and a bond for costs in the office of the clerk of the United States Circuit Court for the Western District of Wisconsin, and on the same day a summons was issued and placed in the hands of the marshal for service.

The marshal made the following return of service (Transcript of Record, p. 6):

"*Served on the within named the City of Watertown, by delivering to August Tauck, City Clerk, and Fred. Meyer,*

* The cases of Henry Amy *et al.*, No. 197, Edwin F. Knowlton *et al.*, No. 198 and 199, and Rufus P. Spalding *et al.*, No. 201, all against the City of Watertown will be included in the argument of above cause, as they all involve the same questions.

"City Treasurer of said City of Watertown, personally each a "copy of the within summons this March 6th, 1873."

On March 25th, 1873, the City of Watertown appeared *specially* and moved (Transcript of Record, p. 8) to set aside the service of the summons because the summons had not been served upon the city, for the reason that no service had been made upon the mayor of the city. This application was based upon the affidavits of *August Tauck* (page 7) and *Fred. Meyer* (pages 7 and 8) that neither of them was the *mayor* or *acting mayor* at the time said service was made upon them.

The U. S. Marshal filed an affidavit in opposition (p. 6), which showed that *there had been no mayor or acting mayor of said city since February 14th, 1873.*

On April 9th, 1873, the Court decided the defendant's motion and set aside (page 9) the service of the summons because the summons had not been served upon the defendant as provided by law.*

On June 19th, 1883, an affidavit (pages 9 and 10) was filed which showed that the plaintiff William S. Pierson departed this life on April 18, 1879, and that the plaintiffs in error were named as executors in his last will and testament, which had been duly admitted to probate. On the same day an order (pages 10 and 11) was entered reviving this action† in the name of the plaintiffs in error, as exe-

*In case No. 198 the marshal made the following return of service (Record, page 4): "Served on the within named the City of "Watertown, by delivering to August Tauck, city clerk, and Fred. "Meyer, city treasurer of said city, and Elias Meyer, an alderman "from the First Ward of said city and an acting member of the "board of aldermen of said city and mayor-elect of said city at the "city election held April 1st, 1873, a true copy of the within sum- "mons this April 2d, 1873, there being no other person acting as "mayor of said city." Upon the affidavit of Chris. Meyer (Record, pages 5 and 6), that he was not the mayor or the acting mayor on April 2d, 1873, the Court made an order (Record, page 6) vacating the alleged service.

†Case No. 198 was also revived (Record, page 10); also case No. 199 (Record, pages 5 and 6).

cutors, and directing that the supplemental complaint offered be filed, and that the clerk of the court deliver to the marshal for service the summons in the action as revived.

On June 26th, 1883, the marshal made the following return of service, to-wit (page 66):*

"*Served the within summons on the City of Watertown, "by delivering a copy thereof to Henry Bieber, city clerk, and "also a copy thereof to Charles H. Gardner, city attorney, "and a copy thereof to Fred Kusel, the last elected chairman "of the board of street commissioners, of said city, this "26th day of June, 1883, the office of mayor of said city "being vacant and there being no president of the common "council nor presiding officer thereof in office.*"

On July 14, 1883, the defendant *appeared in the action* (Appearance, p. 6) and demanded a copy of the complaint.†

PLAINTIFF'S COMPLAINT. (Pages 11 to 64).

The complaint shows:

First. The citizenship and residence of the parties.

Second. That the City of Watertown was a municipal corporation organized and existing under and by virtue of the laws of Wisconsin and was fully authorized and empowered by the laws of the State to issue the obligations in the complaint mentioned and to bind itself thereby.

Third. That the City of Watertown, on June 1st, 1856, made, executed under seal, issued and delivered in full conformity to law, its certain written obligation, which, before delivery, was signed by its mayor and by its clerk, and was in the following words and figures, to-wit:

* Same service in all five cases. In case 197 (Record, pages 2 and 3); in case 198 (Record, pages 10 and 11); in case 199 (Record, page 6); and in case 201 (Record, page 2).

† Same was so in all five cases.

No. 184.

UNITED STATES OF AMERICA.*

STATE OF WISCONSIN, CITY OF WATERTOWN.

Issued to aid in the construction of the Watertown and Madison R. R.

KNOW ALL MEN BY THESE PRESENTS that the City of Watertown is justly indebted unto and promises to pay Wm. B. Hibbard or bearer the sum of one thousand dollars on the first day of January, A. D. 1877, at the Bank of North America, in the City of New York, together with interest thereon at the rate of eight per cent. per annum, payable semi-annually on presentation and surrender of annexed interest warrants or coupons at said bank. For the payment of principal and interest the faith and credit of said City of Watertown are inviolably and irrevocably pledged.

This bond is one of a series of two hundred, of the same amount, tenor, and date, issued in conformity with an act of the Legislative Assembly of Wisconsin and ordinances of the City of Watertown.

In witness whereof the common council of the City of Watertown hath hereunto caused to be affixed the corporate seal of said city and these presents to be signed by the mayor and countersigned by the clerk of the common council of said city the first day of June, A. D. 1856.

(Seal of the City of Watertown, Wisconsin.)

WM. CHAPPELL, *Mayor.*
SAM'L BAIRD, *Clerk.*

Fourth. Similar allegations as to bond No. 185, which bond is similar in every respect as bond No. 184 and is set out at length.

Fifth. Similar allegations as to bond No. 186, which bond is similar in every respect to bonds Nos. 184 and 185 and is set out at length.

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*The validity of these bonds has been litigated in the State courts of Wisconsin, the Supreme Court of Wisconsin in holding them valid obligations and a legal indebtedness of the city of Watertown.

Rogan *vs.* The City of Watertown, 30 Wis., 259.

Sixth. That said bonds with the coupons attached, which are hereinafter mentioned, before the maturity thereof were purchased for value by William S. Pierson and he became the owner thereof.

Seventh. That since the commencement of this suit, to-wit, on April 18, 1879, said Pierson died, leaving a last will and testament, wherein he appointed the plaintiffs in error as executors thereof.

Eighth. That said last will and testament was duly proved and admitted to probate in the Probate Court, Windsor District, Hartford County, Connecticut, on April 28, 1879, and thereupon the plaintiffs in error entered upon their duties as executors under said will in accordance with the laws of the State of Connecticut, and ever since have been and still are legally acting executors of said last will and testament.

Ninth. That, according to the laws of the State of Connecticut, the plaintiffs in error became the executors of said will by the proof of the will in probate and the admission of the same without the issuance of any letters testamentary.

Tenth. That on June 19, 1883, a copy of the will of said William S. Pierson, with the probate thereof annexed, as required by the laws of Connecticut, duly authenticated as required by law, was duly filed in the County Court of Milwaukee County, Wisconsin.

FIRST CAUSE OF ACTION.

That said defendant, the City of Watertown, on the first day of June, A. D. 1856, made, executed, issued and delivered, in full conformity to law, its certain written obligation or promise to pay, which, before delivery, was signed by its mayor and by its clerk, and was in the words and figures as follows, to-wit:

*$40.00. The City of Watertown will pay to the holder hereof forty dollars on the first day of January, 1858, at the Bank of North America, in the City of New York, on presentation hereof, being the interest due that day on bond of city, No. 184, issued to aid the Watertown and Madison railroad.

WM. CHAPPELL, *Mayor.*
S. BAIRD, *Clerk.*

That the said obligation above set forth is an interest warrant or coupon annexed to bond No. 184, above more specifically set forth; that the plaintiffs are the lawful owners and holders of said coupon; that defendant has not paid the same, and that there is now due to the plaintiffs thereon from the defendant the sum of forty dollars, with interest thereupon, at seven per cent. per annum, from the first day of January, 1858, which said plaintiffs claim and demand judgment therefor.

CASE 197 declares upon *bonds Nos. 115, 40 and 183* for $1,000 each, due January 1st, 1877, and upon *coupons* (attached to these bonds) due July 1st, 1872, and every half year thereafter to July 1st, 1876.

CASE 198 declares upon *bonds No. 23 for $1,000 and Nos. 98 and 196 for $100 each, and Nos. 99, 88 and 90 for $500 each*, all due August 1st, 1863, and upon *coupons* (attached to bonds Nos. 23, 79, 88, 90, 98 and 196) due February 1st, 1858, and each half year thereafter to August 1st, 1863, and upon *coupons* (attached to bonds Nos. 23 and 191) due January 1st, 1858, and each half year thereafter until January 1st, 1873.

CASE No. 199 declares upon bonds Nos. 133 and 191 for $1,000 eaeh, due January 1st, 1877, and upon coupons (attached to these bonds) due July 1st, 1873, and each half year thereafter until July 1st, 1876, inclusive.

CASE No. 200 declares upon *coupons* (attached to bonds Nos. 184, 185 and 186) due January 1st, 1858, and each half year thereafter until January 1st, 1873, inclusive.

CASE No. 201 declares upon *bonds Nos. 184, 185 and 186* for $1,000 each, due January 1st, 1877, and upon coupons (attached to these bonds) due July 1st, 1873, and each half year thereafter until July 1st, 1876, inclusive.

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* We print this entire only to show the form of all the coupons and causes of actions.

ANSWER.* (Pages 68 and 69.)

The answer of defendant shows:

First. It denies any information sufficient to form a belief as to whether William Pierson ever became the owner of the bonds and coupons mentioned and as to the other preliminary allegations of the complaint.

Second. It pleads the statute of limitations.

Afterwards, on August 21st, 1883, the plaintiffs served and filed their amended complaint:

AMENDMENTS TO COMPLAINT.

After paragraph 10th of said complaint add the following allegations:

Said plaintiffs allege, on information and belief, that said defendant, the City of Watertown, and the officers, agents, citizens, and residents of said city did, subsequent to the 1st day of March, A. D. 1873, conspire together and with each other, and ever since have conspired together and with each other, for the purpose and with the preconceived intent and design to defraud these plaintiffs and all other owners and holders of the bonds and coupons to such bonds, issued by said city and to prevent these plaintiffs and other owners and holders of said bonds and coupons from obtaining the service of process on said city.

Said plaintiffs further allege, on information and belief, that each year since the 1st day of March, 1873, a mayor of said city was elected, as required by law, but said mayor each year, with the intent and design aforesaid, qualified as hereinafter mentioned and immediately thereafter placed his resignation in the hands of the city clerk of said city, to be filed by him in case of emergency, and to take effect accordingly.

Said plaintiffs further allege, on information and belief, that each year since the 1st day of March, 1873, after the mayor and members of the common council had been

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* Same answer was interposed in all five cases.

elected, they and each of them failed to qualify until they had assembled together in a secret place with locked doors, unknown to the people at large and to these plaintiffs, and with persons on watch to inform them of the approach of any person or persons, and then and there, if unmolested, the mayor and members of the common council, qualified as required by law, transacted for said defendant city certain necessary business and thereafter immediately filed with the city clerk of said city their respective resignations, to take effect immediately, and which resignations went immediately into effect.

Said plaintiffs further allege that since the 1st day of March, 1873, they have employed attorneys and agents for the purpose of ascertaining who was the mayor or acting mayor or chairman of the common council or chairman of the board of street commissioners, and for the purpose of having process served on said city; but owing to said conspiracy, as these plaintiffs are informed and believe, since the first day of March, 1873, there has been no mayor of said city, except each year for a few hours at such secret and concealed meetings, and the common council of said city, with said fraudulent intent and design, has failed each year to elect a chairman of said common council, and since said last mentioned date there has been no person who was acting mayor and no chairman of the board of street commissioners.

Said plaintiffs further allege that in the above entitled action said William S. Pierson, deceased, on or about the 1st day of March, 1873, filed a *præcipe* for a summons and an undertaking for costs, and a summons was issued in due conformity to law and placed in the hands of the United States marshal for service, and that on or about March 2, 1873, the said marshal, after due and diligent search and inquiry, served the said summons on those persons whom, according to the best information he could derive, he had ascertained to be the mayor and city clerk of the City of Watértown, and on the same day returned the said summons as served according to law; that on March 25th, 1873, the said City of Watertown, appeared specially in said action for the purpose of moving to set aside the service of said summons on the ground that the persons on whom said summons had been served were not, in fact, the mayor and city clerk of said city; that on April 8th, 1873, the said motion came on to be heard, and

this Court ordered that the service of said summons be set aside for the reason that the persons so served were not the mayor and city clerk of said city, and ordered that the said summons be returned to said marshal to be served according to law; that since said date the said marshal has not been able to ascertain who were the mayor and city clerk, or mayor or city clerk of said city or the persons on whom process could be served.

Said plaintiffs further allege that, notwithstanding they have used due diligence and have hired attorneys and agents for the purpose of having process served on said city, they have been unable to this date to serve or have served the summons in this action on the mayor of said city or on any person who by law should exercise the functions of mayor of said city.*

AMENDED ANSWER.† (Pages 74 to 77.)

The amended answer as a first defense denies the allegations of the complaint and as a separate defense pleads the statute of limitations in the following words, to-wit (page 77):

And this the said defendant, for a further and separate defense, which it will insist upon herein to said action and to the whole thereof and to each and every cause of action set forth in said amended complaint, avers and alleges, that neither the said action nor any of the causes of action stated in said amended complaint accrued within the six years next before the said 19th day of June, 1883, nor on nor since the day and year last aforesaid; that on or after and not before the said 19th day of June, 1883, the summons herein last above mentioned was first delivered to the United States marshal for service or to be served on this defendant, and that the same never was or had been delivered to such marshal or to any officer or person for service or to be served on this defendant or otherwise before said 19th day of June, 1883; and that neither this said action nor any of the causes of action in the said amended complaint stated nor any part thereof accrued

* The same amendments to complaint were interposed in all five cases.

† Same amended answer was interposed in all five cases.

within six years before the commencement of this the above entitled action, and that the said action was not commenced before the said 19th day of June, A. D. 1883, nor was it commenced within the six years limited by law for the commencement thereof after the same accrued and is barred, the whole thereof, by the statutes of limitations of the State of Wisconsin; that as to all the bonds, interest warrants, and coupons described in said amended complaint and as to each and every one of said bonds, interest warrants, and coupons, the said defendant saith and avers that each and all of said several causes of action in said amended complaint stated did not nor did any or either of them accrue thereon within the six years next before the commencement of this action, and that this said action and the whole and every part thereof is barred by the statute of limitations of the State of Wisconsin.

DEMURRER.* (Page 78.)

Now come the above-named plaintiffs and demur to the defense in the defendant's amended answer contained, to-wit, to the defense of the statute of limitations, for the reason that it appears upon the face thereof that it does not state facts sufficient to constitute a defense.

ORDER OVERRULING DEMURRER.* (Page 78.)

It was ordered that the demurrer to the plea of the statute of limitations set up in defendant's amended answer to amended complaint be and the same is hereby overruled. It is further ordered that plaintiffs be and are hereby allowed twenty days in which to file such new and further pleadings as they may be advised is proper, or, in default thereof, judgment will go for defendant.

The plaintiffs stood on their demurrer and judgment was entered (pages 80 and 81) dismissing the plaintiff's

*Similar demurrers were interposed in all five cases and similar orders and judgments.

complaint because barred by the six years statute of limitations.

From this judgment plaintiffs in error have brought the case to this court by writ of error.

According to the practice under the code of Wisconsin, the plaintiff could not reply to the defendant's answer of the statutes of limitations the facts he relied upon to avoid the bar of the statute. He may, therefore, when the statute is pleaded, amend his complaint by setting out the facts he relies upon to avoid the bar and the defendant may, if he wishes, in his answer of the statute, traverse the facts. In this case the defendant answered the statute as a separate defense without, on that defense, traversing the allegations of the plaintiff to avoid the bar thereby under the code as to that defense admitting these allegations. To this defense, the plaintiff demurred and thereby raised the question as to whether the facts averred avoided the bar of the statute.

ASSIGNMENT OF ERRORS.

The only question involved upon this hearing is whether under the facts alleged in the amended complaint the statute of limitations has run and outlawed the plaintiffs' bonds and coupons.

We assign as error the ruling of the Court below that the statute of limitations has run.

A. The Statutes involved in this case.

1. *Plan of organization of the City of Watertown as shown by the statutes.*
2. *Statutes providing for the service of process.*
3. *Statutes of limitations.*

I. Plan of organization of the City of Watertown as shown by the laws.

The City of Watertown was originally incorporated by chapter 45 of the private and local laws of Wisconsin, for 1853, but by an Act of the legislature of Wisconsin, approved March 28, 1865 (being chapter 233 of the laws of Wisconsin of 1865), the charter of the City of Watertown was consolidated so that its plan of organization can readily be understood by an examination of that law.

Chapter 1, Section 3: "The said city shall be divided "into seven wards."

Section 4: "The corporate authority of said city shall "be vested in one principal officer styled the mayor, in "one board of aldermen, consisting of two members from "each ward, who, with the mayor, shall be denominated "the common council * * *."

Section 5: "The annual election for ward and city "officers shall be held on the first Tuesday of April of "each year * * *."

Section 6: * * * "All elective officers, except * "* * aldermen, shall, unless otherwise provided, hold "their respective offices for one year *and until their succes-* "*sors are elected and qualified.*"

Section 7: "In the event of a vacancy in the office of "mayor, alderman * * * the common council shall "order a new election * * *."

Chapter 2. Section 2. "The mayor, when present, "shall preside over the meetings of the Common Council, "and shall take care that the laws of the state, and the "ordinances of the city, within the corporation, are duly "enforced and observed, and that all officers of the city "discharge their respective duties. He shall appoint the "police force * * *. He shall have a vote, in case of "a tie only * * *."

Section 3. "At the first meeting of the Common "Council in each year, or as soon thereafter as may be, "they shall proceed to elect by ballot, one of their num- "ber President; and in the absence of the Mayor, the sa d "President shall preside over the meetings of the Com- "mon Council, and during the absence of the Mayor from "the city, or his inability from any cause to discharge the

"duties of his office, the President shall execute all the "the powers, and discharge all the duties of Mayor. In "case the Mayor and President shall be absent from any "meeting of the Common Council, they shall proceed to "elect a temporary presiding officer, who, for the time "being, shall discharge the duties of Mayor. The Presi- "dent, or temporary presiding officer, while presiding over "the Council, or performing the duties of Mayor, shall "be styled "Acting Mayor," and acts performed by them "shall have the same force and validity as if performed "by the Mayor."

Chapter 3, Section 3. "The Common Council shall have "the management and control of the finances, and of all "the property of the city, and shall likewise, in addition "to the powers herein vested in them, have full power to "make, enact, ordain, establish, publish, enforce, alter, "modify, amend and repeal all such ordinances, rules and "by-laws for the government and good order of the city, "for the suppression of vice and immorality, for the pre- "vention of crime and for the benefit of trade, commerce "and health * * *."

The Common Council is then given, in 26 Sections, the usual powers which are commonly vested in the Common Councils of cities.

Chapter 5, Section 1. "* * * All funds in the "treasury * * shall be under the control of the Com- "mon Council, and shall be drawn out upon the order of "mayor and clerk duly authorised by vote of the Common "Council * * *."

Chapter 7, Section 2. "The Common Council shall by "resolution levy such sum or sums of money as may be "sufficient for the several purposes for which taxes are "herein authorized to be levied * * *."

Chapter 61 of the Private and Local Laws of Wisconsin for 1867 provides:

Section 1. "Section seven of the first chapter of said act "(an act to incorporate the City of Watertown and the "several acts amendatory thereof Chapter 233 of the Gen-

"eral Laws of 1865) is hereby amended so that it shall "read as follows:

"In the event of a vacancy in the office of mayor * * "* by death, removal or other disability, the Common "Council shall order a new election * * *. In case of "a vacancy in the office of alderman the mayor may "order a new election * * *."

"* * * *Any city officer who shall resign his office shall "file with the city clerk his resignation in writing directed to the "mayor and such resignation shall take effect from the time of "filing the same."*

Chapter 163 of the Private and Local Laws of Wisconsin for 1870 provides:

Section 5. "Seven aldermen of the Common Council of "said city, when there is not a quorum to act, are hereby "authorized to audit accounts against the city * *, and "they may, *in case of vacancy in the office of Mayor*, draw "orders on the City Treasury for the amounts thus audited. "* * * The resignation of the Mayor shall be in writ-"ing directed to the Common Council or City Clerk, and "filed with the City Clerk, and shall take effect from the "time of filing the same."

Chapter 204 of the Private and Local Laws of Wisconsin for 1871 provides:

Section 1. "The senior alderman of each ward of the "City of Watertown shall constitute a board of street com-"missioners, who are hereby authorized, subject to the "regulation and control of the Common Council, to audit "and allow accounts against the city, * * * and "when allowed, orders on the treasury shall issue therefor, "and in case of vacancy in the office of Mayor, and there "is no president of the Common Council to act, said orders

"may be signed by the chairman of said board and the "City Clerk. The City Clerk shall be the clerk of said "board, and shall keep record of its proceedings. The "Mayor may preside at the meetings of said board, and "they may elect a chairman who shall preside in his "absence. * * * Said board shall have all the "powers conferred upon the Common Council by the city "charter in relation to streets and bridges and sidewalks. "* * * Said board are also authorized to canvass the "returns of all votes polled at the election for city or "ward officers, and determine and declare the result of "such election."

Section 2. "In case of vacancy in the office of alderman "in any of the wards, the aldermen remaining in office "shall have and exercise all the powers of street commis- "sioners of the ward. *The resignation of the Mayor shall "be in writing directed to the Common Council or City Clerk, "and filed with the City Clerk, and shall take effect at the time "of filing the same.*"

Section 3. "There is hereby levied upon the real and "personal property of the city of Watertown, annually, 5 "mills on the dollar for school purposes; two mills on the "dollar for the city general fund * * *."

It provides a levy for ward purposes.

"The Common Council of said city may annually levy "such additional taxes for the current expenses of said "city as they may deem necessary * *."

"*Section 5* of Chapter 163 of the Private and Local "Laws of 1870 is hereby repealed."

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Chapter 4 of Laws of Wisconsin for 1879 provides:

Section 2. "The board of street commissioners of said "city and the chairman of said board, shall have concur- "rent power with the Mayor and Common Council of said "city in the appointment of inspectors and clerks of elec- "tion, and shall have all other powers conferred by law "upon said Mayor and Common Council, subject to the

"control of said Common Council, except the power of "levying taxes, which they shall not have in any case "whatever."

Section 3. "The common council of said city may, "in its discretion, in any year, reduce the amount of city "taxes levied under section three of chapter two hundred "and four of the private and local laws of 1871, and "cause a less sum than is levied under said section "to be placed in the tax list for collection, for that year, "for the several funds of the city."

2. Statutes providing for service of process.

The original charter of the City of Watertown (Chapter 45 of the Private and Local Laws of Wisconsin for 1853) provides:

Section 21. "When an action or suit shall be com- "menced against the city, the service thereof may be "made by leaving an attested copy of the process *with* "*Clerk or Mayor.*" * * *

The consolidated charter of the City of Watertown (Chapter 233 of the Laws of Wisconsin for 1865) provides:

Chapter 9, Section 8: "When any suit or action shall "be commenced against said city, the service thereof may "be made by leaving a copy of the process *with the* "*Mayor.*"

Chapter 9, Section 10, of consolidated charter: "No "general law contravening the provisions of this act shall "be considered as repealing, amending or modifying the "same unless such purpose be expressly set forth in such "law."

Whether Section 2637 of the Revised Statutes modifies this provision is immaterial, because Chapter 9, Section 8, of consolidated charter provides that service shall be

made upon the *mayor* alone and Section 2637 upon *the mayor and city clerk.* Under either law a *service upon the mayor* is necessary.

The Revised Statutes of Wisconsin of 1878 provide:

Section 2637: "Actions against corporations shall be "commenced in the same manner as personal actions "against natural persons. The summons shall be served " * * * by delivering a copy thereof as follows: " * * *

"3. If against a city *to the Mayor and the City Clerk.*"

3. Statutes of Limitations.

The Revised Statutes of 1878 provide:

Section 4984, Revised Statutes of Wisconsin for 1878, provides:

"In any case when a limitation or period of time pre- "scribed in any act which is hereby repealed * * * "shall have begun to run and a limitation or period of "time for such purpose shall be prescribed in these "revised statutes, the limitation or period prescribed by "these statutes shall be held to apply to such rights or "remedies as shall accrue subsequently to the time when "the same shall take effect, and the act repealed shall be "held to continue in force and operative to determine all "such limitations and periods of time which shall have "previously begun to run. * * *"

Section 4219. "The following actions must be com- "menced within the periods respectively hereinafter "prescribed, after the cause of action has accrued." * * *

Section 4222 *within six years:* * * *

2. "An action upon any bond, coupon, interest war- "rant * * * whether sealed or otherwise, made or "issued by any town, county, city, village or school "district in this state."

Section 4978: " * * and the following acts of "the legislature passed in the several years hereinafter "enumerated, shall be repealed, that is to say:

In the long list is found Chapter 53 of the Laws of 1872.

Chapter 53 of the Laws of Wisconsin, for 1872, provides:

Section 1. "No action brought to recover any sum of "money *on any bond, coupon,* interest warrant, * * * "made or issued by any * * * city * * * or "upon any installment of the principal or interest thereof, "shall be maintained in any court *unless such be commenced* "*within six years* from the time when such sum of money "has or shall become due. * * * *provided that* "*any such action may be brought within one year after this act* "*shall take effect:* Provided further that this act shall in "no case be construed to extend the time within which an "action may be brought under the laws heretofore "existing."

Section 2. "This act shall take effect and be in force "from and after its passage. Approved, March 9th, "1872."

Under Section 15, of Chapter 138, of the Revised Statutes of Wisconsin, for 1858, the period of limitation upon the bonds and coupons in question *was twenty years.**

Chapter 53 of the Laws of Wisconsin for 1872 provides the period of limitation for all the bonds and coupons involved in this suit, to-wit, they outlaw at the expiration of six years from the date of their maturity, provided that an action may be brought within one year after said act took effect. It took effect March 9, 1872, so no bond or coupon could outlaw before March 9, 1873.

*These particular provisions of the statutes of limitations of Wisconsin received judicial construction in this Court in Koshkonong *vs.* Burton, 104 U. S., 668, where it was held that up to March 9th, 1872 (when chapter 53, of the laws of 1872 went into effect), bonds and coupons similar to those in suit outlawed in twenty years, but that after that date they would each outlaw in six years, as provided in Chapter 53 of the Laws of 1872.

It has also been held in this Court that the statute begins to run on such coupons when it matures independent of the maturity of the bond to which it was attached. Ibidem

Amy *vs.* Dubuque, 98 U. S., 470.

B.—ARGUMENT.

I. When was this action commenced?

Under the common law* and in Wisconsin † previous to the adoption of the code, the suing out of a writ was the commencement of the suit, even if not followed by immediate service, and *if properly continued* avoided the bar of the statute. This afforded a perfect remedy if, for any reason, a defendant could not be served with process, as the plaintiff could repeatedly properly continue the suit from time to time until the defendant could be found.

On October 11th, 1856, a code ‡ was adopted in Wisconsin.

Title 5, Section 32, of the Code, provided:

Section 32. "Civil actions in the courts of record of "this State shall be commenced *by the service of a summons.*"

This section, with the rest of the code, was copied into the Revised Statutes of 1858.§

This still continues to be the law in Wisconsin.

Section 2629 of R. S. of 1878: "A civil action in a "court of record shall be commenced *by the service of a* "*summons.* From the time of such service or the issuance "of a provisional remedy the court shall be deemed to "have acquired jurisdiction and to have control of all "subsequent proceedings."

From the time of the enactment of the code no suit could be commenced in Wisconsin except by a summons.‖

By these provisions a suit cannot be commenced by the *issuance of a summons* alone, but it is commenced only by service. It is expressly so provided in Section 27 of

* See cases cited in Angell on Limitations (sixth edition), chapter 28, pages 330 to 347.

† Blair *vs.* Cary, 9 Wisconsin, 543.

‡ It was adopted by chapter 120, of the Laws of Wisconsin for 1856.

§ Section 1 of Chapter 124 of Revised Statutes of 1858.

‖ Jarvis *vs.* Barrett, 14 Wis., 591.
Congar *vs.* Galena R. R. Co., 17 Wis., 477.

Chapter 138, entitled "Of the limitation of actions of the Revised Statutes of 1858," as follows:

Section 27. "An action shall be deemed commenced "as to such defendant, when the summons is served on "him * * *."

To the same effect Section 4239 of the Revised Statutes of 1878, and

Sherry *vs.* Gilmore, 58 Wis., 333.

Formerly the clerk of court issued the writs under the seal of the court, now any attorney at law can issue a summons in the form prescribed by Section 2631 of Revised Statutes of 1878. Then a suit was commenced *by the issuance of* the writ and a formal record was made of that fact by the clerk; now attorneys can issue a summons and it is immaterial when the same is issued, because its *service alone* commences the suit.

Of course a voluntary appearance of a defendant is equivalent to a personal service of the summons upon him.*

This is the law applicable to the State Courts of Wisconsin.

By an act of Congress, approved June 1st, 1872 (Section 914 of R. S. of United States), it is provided:

"The practice, pleadings and modes of proceeding in "civil cases * * * shall conform, *as near as may* "*be*, to the practice, pleadings and forms and modes of "proceeding existing at the time in like causes in courts "of record of the State within which such circuit courts "are held, any rule of Court to the contrary notwith-"standing."

By Sections 911 and 912 of R. S. of United States, all writs and process issuing from the courts of the United States shall be under seal of the court and shall be signed

* Section 44 of Title 5 of the Code.
Section 14 of Chapter 124 of Revised Statutes of 1858.
Section 2643 of Revised Statutes of 1878.

by the clerk and shall bear teste from the day of such issue.

In order to conform the "practice" and "mode of proceeding" in the United States Courts to the law of the State "*as near as may be*," it has been held that a summons issued by the United States Court must still be under the seal of the court and signed by the clerk.*

The form of the summons is different in the State and Federal Courts, but to conform the "practice" and "mode of proceeding" "as near as may be" to the State Courts, the Federal Courts must adopt the provision of the State law as to what constitutes a commencement of a suit. If that be so, a suit is commenced in the Federal Court since the act of Congress, approved June 1st, 1872, by the *service* of summons alone.

In the case at bar, a summons was issued March 3, 1873 (Record, pages 4 and 5), and attempted to be served on March 6, 1873 (Return of Marshal on page 6 of Record), by serving the city clerk and city treasurer. This alleged service was vacated (Order in Record, page 9), although it appeared (Affidavit of Marshal in Record, page 6), that at the time of the service of the summons there was no mayor or acting mayor of the City of Watertown, and had not been since February 14, 1873. It will be remembered that we have shown above, on page 15 of this brief, that since 1865, a summons could only be served on the City of Watertown by delivering a copy thereof to the mayor of the city. We have further shown, on page 11 of this brief, that by the consolidated charter† of the City of Watertown the mayor held his office, unless otherwise provided, until his successor was elected and qualified, but that in 1867,

*Dwight *vs.* Merritt, 18 Blatchford, 305.

† Section 6 of Chapter 1 of Consolidated Charter (Chapter 233 of Laws of Wisconsin for 1865).

by act of the legislature* it was provided that any city officer could file with the city clerk his resignation in writing directed to the mayor, and that such resignation would take effect from the time of filing the same, and in 1870, by an act of the legislature† it was provided that the mayor could resign by filing his resignation in writing with the city clerk directed to common council or the city clerk, and that such resignation should take effect from the time of filing the same.

Under these laws, as service could only be made upon the city by service upon the *mayor*, and as the office of mayor was permitted to continue "vacant" and there was no mayor or acting mayor of said city, no service of process was possible, and the service which was made upon the city treasurer and city clerk, although it gave notice to the city, was no legal service, and it was so held by the court in its decision. (Record, page 9.)

To the same effect is the decision of the Supreme Court of Wisconsin in the Robinson case,‡ where it is held that the mayor of the City of Watertown is the only officer upon whom service of process against the city can legally be made and when there is a vacancy in the office and there is no president or presiding officer of the common council, a service of process upon the chairman of the board of street commissioners and upon the city clerk will not be good service as against the city.

We must admit, then, that this suit was not commenced by the attempted service of the summons on March 6th,

* Section 1 of Chapter 61 of Private and Local Laws of Wisconsin for 1867.

† Section 5 of Chapter 163 of Private and Local Laws of Wisconsin for 1870. The legislature in 1871, as if there might be some doubt as to the right and effect of a mayor's resignation, repeated the same provision as to resignation of mayor in Section 2 of Chapter 204 of the Private and Local Laws of Wisconsin for 1871.

‡ City of Watertown against Robinson, 69 Wisconsin, 230, decided in 1887.

1873. Afterwards on June 26th, 1883, the original summons dated March 3, 1873 (Record, page 66) was again attempted to be served upon the City of Watertown "by "delivering a copy thereof to Henry Bieber, City Clerk, "also a copy thereof to Charles H. Gardner, City Attorney, "and a copy thereof to Fred. Kusel, the last elected "Chairman of the Board of Street Commissioners of said "city, *the office of mayor of said city* being vacant, and there "being no president of the Common Council nor presid- "ing officer thereof in office."

The defendant city appeared in this action on July 14th, 1883, so this action was commenced by that appearance of the city.

II. Statutes which shorten the period within which causes of action shall outlaw "are subject to the funda- "mental condition that a reasonable time, taking all "the circumstances into consideration, be given by "the new law for the commencement of an action be- "fore the bar takes effect."

None of the *bonds and coupons* involved in the five cases would have been barred by the statute of limitation until the expiration of *twenty** years from the time when they respectively matured were it not for the law of March 9th, 1872, which limited the time to six years, but permitted actions to be brought within a year from the date the act took effect.

It will be remembered that this act of March 9th, 1872,† was limited in its effect to *municipal bonds and coupons* and must be interpreted in connection with other legislative enactments in relation to municipalities and especially to such as provide for the service of process.

We have shown above (page 15 of this brief) how, by the original charter of the City of Watertown, in existence

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* So held by this Court in Koshkonong *vs.* Burton, 104 U. S., 668.
† Chapter 53 of Laws of Wisconsin for 1872.

when these bonds and coupons were issued, suits could be commenced by the service of process upon the *city clerk* or *mayor*, but since the consolidated charter of 1865 process could be served only upon the *mayor* alone. We have also shown (pages 11 to 14 of this brief), that the City of Watertown, as originally organized and even under the consolidated charter of 1865, was governed in the usual way by a mayor and common council and that the president of the common council should, in case of any inability on the part of the mayor, be the acting mayor, and that the mayor and aldermen held over until their successors were elected and qualified, but by the laws of 1870 and 1871 a provision was made for a "*vacancy*" in the office of mayor and acting mayor by permitting the resignation of the mayor and aldermen to take effect immediately before the election or qualification of successors and permitted the city government to be managed by a part of the common council, less than a quorum under a new name, viz., *board of street commissioners*. The law thus permitted a vacancy in the offices of "*mayor*" and "*acting mayor*."

We must construe laws by their intention as it appears from their text and contemporaneous circumstances, and it must therefore have been the intention of the legislature that there should be such "*vacancies*," and that the ordinary city government should, nevertheless, go on.

By the facts alleged in the amendments to the complaint (Record, pages 70 and 71), and which are admitted by the plea of the statute of limitations, it appears how the City of Watertown acted under these provisions of law. The city, its officers, agents, citizens and residents since March 1st, 1873, have conspired together to *prevent* the holders of these bonds and coupons from obtaining service of process, and with that

purpose in view each year since March, 1873, the mayor and members of the common council, who were elected, failed to qualify until they had assembled together in a *secret place, with locked doors*, unknown to the people at large and to these plaintiffs, and with persons on watch to inform them of the approach of any person, and then and there, *if unmolested*, the mayor and members of the common council qualified, transacted for the city certain necessary business and thereafter immediately filed with the city clerk their respective resignations, to take effect immediately and which went immediately into effect, and that since March 1, 1873, there has been no mayor of said city except each year for a few hours at such secret and concealed meetings, and the common council, with the design aforesaid, has failed each year to elect a chairman of said common council, and there has been no person who was acting mayor and no chairman of the board of street commissioners. The plaintiffs have employed attorneys and agents since March 1, 1873, for the purpose of ascertaining who was the mayor or acting mayor or chairman of the common council and for the purpose of having process served upon the city, but notwithstanding they have used due diligence they have been unable to this date to serve or have served the summons in this action on the mayor of said city or on any person who by law should exercise the functions of mayor of said city.

We claim under these circumstances that the act of 1872, if construed to limit the right to sue to six years, as impairing the obligation of the contracts between the city and the holders of its securities, unless a reasonable time, taking all the circumstances into consideration, be given for the commencement of suits. It is not necessary to declare this law unconstitutional because the same result can be accomplished by its proper interpretation.

The law on this subject is well settled in this Court* and in Wisconsin.†

Mr. Justice Harlan says, on page 675 of this decision (Koshkonong *vs.* Burton), in reference to this very act of 1872:

"It was undoubtedly within the constitutional power "of the legislature to require, as to existing causes of "action, that suits for their enforcement should be barred "unless brought within a period less than that prescribed "at the time the contract was made or the liability "incurred from which the cause of action arose. *The "execution of this power is, of course, subject to the fundamental "condition that a reasonable time, taking all the circumstances "into consideration, be given by the new law for the commence-"ment of an action before the bar takes effect.*"‡

The Court further holds that if a reasonable time be not given by the law that fact does render the whole law void, but only extends the time within which the holders of such bonds or coupons may sue to *a reasonable time after its passage*, of course "taking all the circumstances into consideration."

1. As to the bonds and coupons which matured six years before March 9th, 1873, the Court fixed the period of limitation at six years, provided all causes of action could be brought within a year, that is to say, up to March 9th, 1873. The law went into effect March 9, 1872, so that the holders of these coupons were given to March 9, 1873. This was not a reasonable time, taking all the circumstances into consideration. Let us place ourselves in the position of these

* Koshkonong *vs.* Burton, 104 U. S., 668, 675.

† See Wisconsin case cited on page 675 of Koshkonong *vs.* Burton. Ibidem.

‡ To the same effect Pereles *vs.* City of Watertown, 6 Bissell, 79.

plaintiffs. We reside, perhaps, a thousand miles from the boundary line of Wisconsin, and own bonds and coupons of the City of Watertown, which, under the law when we bought the bonds which we were obliged to take notice of, did not outlaw for twenty years. As each half year passes we know our coupons are not being paid, but as we know they do not outlaw for twenty years, we do not sue on each forty-dollar coupon, but think it wise to hold them until default is made on the principal, to-wit, the bonds. The legislature passes a law, unbeknown to us, that we must sue on these defaulted coupons within a year or the same will be barred. We live so far away that we cannot reasonably be expected to know of the passage of such a law at the time of its passage and not until some time thereafter. Otherwise the holders of such securities would be obliged to watch the laws passed annually by each legislature. This cannot be expected of them, and when the bonds and coupons in suit were made payable to bearer, and in New York City, they became negotiable, and it was expected that they would pass to non-residents and non-residents could not reasonably be expected to know or hear of the passage of such a law until some time after its passage, we will ask, was a year a reasonable time? We think it was not. * Whether or not in the case at bar a year *was a reasonable time*, before the expiration of the year, to-wit, on March 3, 1873, the plaintiffs took steps to enforce all of their bonds and coupons which had matured up to that date, they sued out a summons and attempted to have it served, but because of the state of the law permitting "vacancies" in the office of mayor and acting mayor, and the fact that

* A construction of Justice Harlan's decision on page 675 of Koshkonong *vs.* Burton (104 U. S.) would seem to show that he, too, might be of same opinion.

the city had no mayor, they were not able to obtain the service of process. Even when they took steps within the year allowed, they were not able to obtain service of process, on account of the laws of the State, and the action of the city thereunder for the purpose of preventing the service of process. Under such circumstances, the holders of these matured securities, whom even the legislature thought should have a whole year to enforce their claims by suit, were not in fact permitted to bring their suits during that year, because under the law process could not be served upon the city except by service upon the mayor, and the office of mayor and acting mayor were "vacant," and these vacancies which the law provided for were created and maintained by the city defendant, apparently with the purpose of enabling the city to escape the service of process.

The legislature thought a whole year to be a reasonable time within which to bring a suit, after which the matured bonds and coupons should outlaw unless prevented by the commencement of a suit. But the legislation did not in fact give us the year, because resignations and refusal to elect under the law permitting vacancies in the office of mayor and acting mayor prevented the commencement of a suit during such vacancies. If a year was an unreasonably short time, we have never had even that short time, and if it were a reasonable time, then give us a year, and our suits have been commenced in time and the bonds and coupons are not outlawed.

2. As to bonds and coupons which have matured since March 1st, 1873, the law of 1872 is either uncon-

stitutional and void, as impairing the obligations of contracts, or must be construed according to the decision of this Court in Koshkonong *vs.* Burton (104 U. S., 668 to 675), as above explained. The position of plaintiffs as to bonds and coupons maturing since March 1st, 1873, is even worse than as to such as matured before that time, because by the law of 1872 no opportunity at all is given them to commence suit.

These bonds and coupons would have outlawed in twenty years if the act of March 9th, 1872, had not been passed, but since that law was enacted they are limited to six years. If the old law were in force none of these bonds or coupons would be barred, and under the decision of Koshkonong *vs.* Burton they are not outlawed in the six years provided for unless that is a reasonable time, taking all the circumstances into consideration. We have no hesitation in asserting that six years would be a very unreasonable time for a cause of action to outlaw when the laws of the State only permitted a suit against the City of Watertown to be commenced by serving the process upon the mayor, and then the city, under the law, permitted the office of mayor to remain "vacant" the entire six years. Any other interpretation of the laws would amount to this. You must commence your suits within six years, but cannot commence a suit during the "vacancy" in the office of mayor, although that office should remain vacant during the entire time.

Such laws do not permit us to bring suit at all. They deprive us absolutely of the right to enforce the payment of our bonds and coupons by suit, and if that is the effect of the law of March 9th, 1872, there can be no other conclusion than that such a law is unconstitutional and void as impairing the obligation of contracts, unless it be construed as allowing such additional time for the commence-

ment of suits as would be reasonable, taking all the circumstances into consideration.

We have argued above that the change in the period of limitation from twenty to six years can only be upheld as constitutional if a reasonable time was given for the commencement of an action before the bar took effect, taking all the circumstances into consideration, that as to all the causes of action which matured six years before March 9th, 1873, only one year was given, and that such as have matured since that date six years were given, both of which periods of limitation, under the peculiar circumstances of this case, were unreasonable, because, as to the former class even during the whole year allowed and as to the latter class during the six years allowed, suits could not be commenced because the laws of the State permitted a "vacancy" in the office of mayor, and the city so acted that the vacancy was created, and, that, too, for the purpose of preventing the service of process, and a prerequisite for the commencement of a suit was the service of process upon the mayor. There can be no question that no court would hold a period of limitation to be reasonable, and to bar a cause of action if the owner of the claim, using due diligence, could not commence a suit, owing either to a law permitting a vacancy in the office of mayor, or to acts of the city preventing service.

If six years was an unreasonable time, *any period* of time would be unreasonable, so long as under the law service was prevented by the city, even up to twenty years.

This being the law, and the practice of the city under it, the act of March 9th, 1872, must either be construed as unconstitutional and void, or be so construed that the plaintiffs must be allowed a reasonable time after its passage within which to sue, and that means time within

which the city has an officer upon whom process can be served. If the act of March 9th, 1872, be void, then the old statute of limitations would be in force, which would allow us to commence suits upon the bonds and coupons within twenty years from the time when they respectively matured, and if the act of March 9th, 1872, is not to be declared unconstitutional, then we must be allowed a reasonable time for that purpose, and a reasonable time, taking the peculiar circumstances into consideration which we have shown to have existed since March 1st, 1873, might be the full period of twenty years, or even longer.

These suits at bar were commenced by the appearance of defendant on July 14th, 1883, and under our construction of the statutes of limitations, no bond or a coupon which has matured since July 14th, 1863, is outlawed. This disposes of all the bonds and most of the coupons in suit. A few of the coupons did mature previous to these dates. This brings us to the consideration of another proposition of law.

III. Statutes which provide periods of limitation, but prevent the service of process, must be so construed as to allow a reasonable time, taking all the circumstances into consideration, for the commencement of suit after they cease to prevent the service.

When these bonds and coupons were issued, they would outlaw* at the expiration of twenty years from the date of their maturity, and suits could be commenced against the city by serving process upon the *clerk*† or *mayor*, and it was made the duty of the council to fill a vacancy in office of mayor; the city could not get along under that act without a common council. By the consolidated

* Koshkonong *vs.* Burton, *supra*.

† Section 21 of chapter 45 of Private and Local Laws of Wisconsin for 1853.

charter of 1865* service could only be made upon the *mayor alone*, and the laws of 1870 and 1871 provided that less than a quorum of the common council, without the mayor, might carry on the ordinary municipal affairs, and therefore allowed the office of mayor to remain "vacant," thus enabling the city to conduct its business and prevent the service of process and the commencement of suits, which we have shown was the practice and result of these provisions of law.

The logical consequence of this state of affairs and what we have argued above is that statutes which provide periods of limitation, but prevent the service of process, are to be construed as allowing a reasonable time for the commencement of suits after the statutes themselves cease to prevent the service of process.

IV. Statutes of limitations are interpreted by courts so as to accomplish the purpose for which they were enacted, and are suspended when the plaintiff, without any fault on his part, is prevented by law, injunction, fraud or any state of facts from commencing his suit, and that, too, when the statute itself contains no such exception.

"Statutes of limitation are vital to the welfare of society. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish neglect. While time is constantly destroying the evidence of rights they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar. The bane and antidote go together."†

* Chapter 9, section 8 of chapter 233 of Laws of Wisconsin for 1865.

†Justice Swayne in Wood *vs.* Carpenter, 101 U. S., 139.

The law, by statutes of limitations, discourages the enforcement of stale claims. They promote stability and repose, as ancient facts are difficult to prove because the lapse of time necessarily removes, through death and otherwise, the means of proof. Witnesses forget, absence removes them and death seals their lips. Great injustice would be done if it were allowed to enforce stale claims; it would encourage perjury, make property insecure and human affairs unstable. In order to prevent this, statutes are enacted which affect the remedy only and permit suits to be commenced only within given periods and if not begun within the prescribed limitations then their enforcement is forever prohibited. The only purpose of the law is to deprive all persons of the right to enforce their claims by suit, who neglect for an unreasonable time to commence their suits. Statutes prescribe such reasonable periods, but the purpose of the law is to bar only such as are guilty of negligence, denying any remedy to such as fail within a reasonable time to enforce their claims by suit. The purpose of the law is to bar the negligent, *but never the diligent creditor*. The statute was never intended to apply to such persons who attempt to commence suits, but are prevented because the courts of justice are closed by war or civil commotion or because suits cannot be begun against a city because the law fails to provide a method of service. Such persons cannot commence suits for no fault of theirs, and it was never intended by the legislature that their claims should be barred.

It is apparent that it is the intention of the legislature to bar the negligent, but not to affect the diligent creditor. It was to deprive the former of his right to sue unless he became diligent, but not to punish the latter or to deprive him of the right to sue.

A reference to authority will show that courts so construe statutes of limitations.

I. Wisconsin.

It is a Wisconsin Statute of Limitations which we are called upon to interpret, and it is well settled by many authorities in this Court that the Federal Courts, when construing State statutes, including the Statutes of Limitations, will follow the decisions of the court of the last resort in the State.

Green *vs.* Neal, 6 Peters, 291.
Harpending *vs.* Dutch Church, 16 do., 455.
Leffingwell *vs.* Warren, 2 Black., 599.
City of Richmond *vs.* Smith, 15 Wallace, 438.
Davie *vs.* Briggs, 97 U. S., 637.
Fairfield *vs.* County of Gallatin, 100 U. S., 52.

The question has never arisen in Wisconsin as to what effect upon the Statute of Limitations the fraudulent evasion of the service of process, as admitted in this case, may have. The Supreme Court of Wisconsin has, however, in several cases announced authoritatively that fraud would suspend the running of the Statute of Limitations, and that it would liberally construe the Wisconsin Statute of Limitations so as to carry out the intent of the lawmaker, and so as to include exceptions which were not specifically mentioned in the statute itself.

In the case of Knox *vs.* Cleveland, 13 Wis., 245, the Supreme Court of Wisconsin interpreted the following Wisconsin Statute of Limitations, which is found in Section 123 of Chap. 15 of the R. S. of 1849: "No suit or proceeding for the recovery of land sold for taxes, except in cases where the taxes have been paid, or the lands redeemed, as provided by law, shall be commenced within three years from the time of recording the tax deed or sale, and not thereafter."

Chief Justice Dixon, in delivering the opinion of the Court, construes this Statute of Limitations. He first decides that this Statute of Limitations must be construed as to apply not only to the original owner of the fee, but also to the tax-title claimant, and that it would protect either one who had been in possession of the land for three years.

He next discusses the question as to the application of the statute when the land in question remains unoccupied, and construes the statute to mean that the tax-title claimant, by the recording of his deed, gives notice to the world of his title, which cannot be attacked except during the first three years, and then only by a hostile possession of the original owner in fee, or by the latter bringing suit within the three years to have his deed declared void, for any reason. The learned Chief Justice then discussed what effect fraud would have on the running of the statute, that is, if the original owner were kept out of the possession of the lands for three years by artifice or fraud, whether the statute would run. On this point, Dixon, C. J. (pages 252 and 256), says:

"In saying this much in reference to former decisions, we do not, of course, wish to be understood as saying that there may not be circumstances under which the purchaser at the tax-sale may be precluded from taking advantage of the protection afforded by the statute. If by professions of submission to the title of his adversary

"he should induce him to delay the prosecution of it, or if "by fraud or stratagem he should lull him into inactivity, "or throw him off his guard, it is very possible that he "might, by such conduct, forfeit the privileges extended "by it. Effects thus produced might not be presumed to "have been intended by the legislature. It might be "said that it is only when his conduct has been fair and "open, and untainted by fraud or artifice, that he would "come within the spirit of the enactment.

"Miller *vs.* Keene, 5, Watts, 348; Comegys *vs.* Carley, 3 id., 280.

"They had in Pennyslvania, at an early day, a statute "very similar to our own, and some interesting discus- "sions upon it will be found in the following reported "cases: Parrish *vs.* Stevens, 3 S. and R., 298; Ash *vs.* "Ashton, 3 W. & S., 515; Cranmer *vs.* Hall, 4 id., "38; and Waln *vs.* Shearman, 8 S. & R., 357. The "act provided that no action for the recovery of lands "should lie unless the same was brought within five "years after the sale thereof for taxes. In the first-named "case it was held that no action should be maintained "after the lapse of five years, and that it made no differ- "ence whether the purchaser did or did not enter into "possession within that time. The Court considered that "where he did not enter he would be deemed in law to "be in possession, so that the original owner could prose- "cute. But this case was overruled in Waln *vs.* Shear- "man. It was there held that an action could not be "maintained against the purchaser unless he was in actual "possession, and because it could not, the Court decided "that the statute commenced running only from the time "of entry. It was put upon the ground that the Legisla- "ture could not have intended any such monstrous oppres- "sion and injustice as to say to the owner that he must "commence his suit within a fixed period, when, during "that period, he was deprived of the opportunity of so "doing, or it was left with his adversary to decide whether "he should or not. But with us this objection does not "exist. It is obviated by the statutory provision to which "reference has been made. See also Robb *vs.* Bowen, 9 "Barr, 71."

This is a decision of the Supreme Court of Wisconsin in reference to a statute in which there is no exception

provided for except "in cases where the taxes have been "paid or the lands redeemed as provided by law."

In Encking *vs.* Simmons, administrator, 28 Wis., 272, the complaint alleges that the plaintiff was the owner in fee and in possession of certain real estate, derived his title from one Johan Gretman, and that Simmons, as administrator of the estate of said Gretman, has advertised to sell said real estate at public auction, and will sell it unless restrained. The answer alleges that in 1868 Johan Gretman died intestate, and that for about three years prior to his death he was an insane person, and had been confined in the poor house as an insane person, and no guardian or committee was ever appointed for or over his property; that while Gretman was so insane and confined, John Meggers, well knowing of his insanity and confinement, fraudulently caused to be foreclosed by advertisement the mortgage upon the property executed by Gretman to said Meggers, and that this was done for the purpose of unlawfully and fraudulently obtaining title to the premises for the amount of the mortgage; that the property was worth, at least, four times as much; that the plaintiff knew all the facts and was a party to it, and procured his title from Meggers. Chief Justice Dixon, in delivering the opinion of the Court, decides, first, that the law of Wisconsin, in permitting foreclosure by advertisement, contains no exception, and must be so construed, and that, therefore, no exception can be allowed on the ground of insanity. But upon the facts alleged in the answer, and proven upon the trial, the Court was of the opinion that (pages 279

to 281), "the effect of the statute authorizing the fore-
"closure by advertisement can be avoided and the
"sale set aside, and title restored on the ground of
"fraud. * * We think the sale was, under the
"circumstances, fraudulent at law as well as in equity.
" * We need not advert to the general principle
"that fraud vitiates all contracts and proceedings, even
"records and judgments of the most solemn character.
"Nor need we enter into any argument to show that
"proceedings, however sufficient and correct in form,
"which are taken for the clearly ascertained purpose of
"despoiling an insane person or lunatic of his property
"and estate are fraudulent. No one will deny that such
"proceedings are against conscience, and wrong. 'Such
"persons,' says Judge Story, 'being incapable in point of
"capacity to enter into any contract, or to do any valid act,
"every person dealing with them knowing their incapacity,
"is deemed to perpetrate a meditated fraud upon them
"and their rights. And, surely, if there be a single case in
"which all the ingredients proper to constitute a genuine
"fraud are to be found, it must be a case where such un-
"fortunate persons are the victims of the cunning, the
"avarice, and corrupt influence of those who would make
"an inhuman profit of their calamities. Even courts of
"law now lend an indulgent ear to cases of defense against
"contracts of this nature, and if fraud is made out, will
"declare them invalid.' 1 Story's Eq. Jr., Sec. 227. It is
"true, the learned author was speaking more especially
"of contracts, but what he says is also to the purpose
"here. It shows that the true and only ground upon
"which courts of law as well as equity interfere to pro-
"tect and restore the property of insane persons, and
"such as are otherwise non compo tesmentis, is fraud. And
"it shows, furthermore, that any person who, knowing the
"incapacity of parties so situated, takes unjust or im-
"proper advantage of it, is deemed in the law to perpe-
"trate a meditated fraud. If, therefore, the mortgagee in
"this case knew Gretman's insanity, as we are compelled
"to believe, and, instead of foreclosing by suit in equity,
"where a guardian would be appointed and the mort-
"gagor's rights and interests protected, resorted to the
"foreclosure by advertisement in order to obtain title to
"the land in that way for half its value, either for his own

"benefit or for the benefit of the plaintiff in this action, "who knew all the facts, it was an active, genuine fraud "on the part of both. It was no less and no better than "any other cunning or contrivance devised and executed "malo animo to deprive an insane man of his property. "It was the making of an inhuman profit from his "calamities, from corrupt and avaricious motives, spoken "of by Judge Story with so much and such just abhor- "rence. It was a fraud on the law itself or statute author- "izing such foreclosure, if a fraud of that kind ever "existed. And such fraud, in our judgment, avoids the "effect of the statute in favor of the parties who have "committed it.

"*There is, for example, very much and very high authority* "*for saying that the bar of the statute of limitations may be* "*avoided at law for fraud in the party seeking to take advantage* "*of it.* Sherwood *vs.* Sutton, 5 Mason, 143; Bree *vs.* Hol- "beck, Doug. R., 655; Jones *vs.* Carroway, 4 Yeates, 109; "Persons *vs.* Jones, 12 Ga., 371; First Massachusetts Turn- "pike Co. *vs.* Field, 3 Mass., 201; Homer *vs.* Fish, 1 Pick., "435; Welles *vs.* Fish, 3 Pick., 73; Farnam *vs.* Brooks, 9 "Pick., 212, 246; Bishop *vs.* Little, 3 Greenl., 405; Cole "*vs.* McGlathry, 9 Greenl., 131; Brickner *vs.* Lightner's "Ex'r, 40 Pa. St., 199; Bicknell *vs.* Gough, 3 Atkyns, 557; "Carlisle *vs.* Foster, 10 Ohio St., 198; Conyers *vs.* Kenans "and Hand, 4 Ga., 308. *How does the question of avoiding* "*the effect of the statute under consideration for actual fraud* "*differ from that of avoiding the effect of the statute of limita-* "*tions for the same cause? It seems to us there can be no* "*difference*"

The case of Ahnert *vs.* Zaun, 40 Wis., 622, 628, was an action of ejectment, and the defense was adverse possession for more than ten years under the statute of limitations. The plaintiff was a resident of the City of New Orleans during the war of the rebellion, and he claimed that the running of the statute of limitations

was suspended during the war. There was no such exception provided for in the Wisconsin Statute of Limitations, and it was the question to be passed upon in the Supreme Court.

Justice Cole, in delivering the opinion of the Court says:

"*The important question in this case is, whether the plaintiff* "*was prevented by the existence of civil war from bringing his* "*action in the courts of this State before the statute of limita-* "*tions had run upon it.* It is a fact found by the jury, that "the plaintiff and his brother Ernst were residents of the "city of New Orleans during the late war of the rebellion, "and that they continued to reside in that city during the "war. And the learned counsel contends that in conse- "quence of the residence of the plaintiff in that city, and "his disability to sue, there should be deducted from the "computation the period covered by the war up to August "20, 1866, when the rebellion was declared to be com- "pletely suppressed and peace restored by the proclama- "tion of the President of that date. On the other hand, "the counsel for the defendant insists that the plaintiff can "claim no suspension of the statute of limitations beyond, "at the utmost, the 2nd day of April, 1863; and that, "strictly, non-intercourse between New Orleans and the "loyal States terminated on the 6th day of May, 1862, on "the capture and occupation of the city by the United "States army, at which time adverse possession under "color of title began again to run against the plaintiff: "*The consequences of the war upon the plaintiff's right must* "*be ascertained and determined, if possible, from the adjudica-* "*tions of the supreme court of the United States, which we* "*deem controlling upon the subject.*

"Under the authorities, there is no room for doubt or "argument as to the legal consequences which result from "a state of war upon all contracts and existing remedies, "so far as the citizens of the belligerent countries are con- "cerned. Mr. Justice Nelson, in the Prize Cases, states the "doctrine as follows: 'The people of the two countries "became immediately the enemies of each other—all in- "tercourse, commercial or otherwise, between them unlaw- "ful—all contracts existing at the commencement of the "war suspended, and all made during its existence

"utterly void.' *And as touching the right of a citizen of one "belligerent to maintain a suit in the courts of the other*, Mr. "Justice Clifford, in Hanger *vs.* Abbott, 6 Wall., 532, 539, "remarks: '*Total inability on the part of an enemy creditor "to sustain any contract in the tribunals of the other belligerent "exists during the war; but the restoration of peace removes the "disability, and opens the doors of the courts. Absolute sus-"pension of the right, and prohibition to exercise it, exists during "the war by the law of nations; and if so, then it is clear that "peace cannot bring with it the remedy, if the war is of much "duration, unless it also be held that the operation of the statute "of limitations is also suspended during the period the creditor "is prohibited by the existence of the war and the law of nations "from enforcing his claim.' The court has likewise repeatedly "held that the statute of limitations of the several States did not "run against the right of action of parties during the con-"tinuance of the civil war.* The Protector, 9 Wall., "687; same case, 12 id., 700; Levy *vs.* Stewart, 11 id., 244; "United States *vs.* Wiley, id., 508; Brown *vs.* Hiatts, 15 "id., 177; Batesville Institute *vs.* Kauffman, 18 id., 152; "Ross *vs.* Jones, 22 id., 576.

The Supreme Court of Wisconsin has, by these decisions, so construed the statutes of limitations so as to accomplish the purpose for which they were enacted. It has made exceptions to the statutes of limitations which are not found in the statutes themselves, but are all based upon sound reason and all fall within the spirit of the statutory exceptions.

In Knox against Cleveland, *supra*, exception is made in case of fraud so that the running of the statute is suspended during the continuance of the fraud. In Encking against Simmons, *supra*, it is expressly held that the effect of the statute of limitations can be avoided by actual fraud, and in Ahnert against Zaun, *supra*, that the statute of limitations of Wisconsin is suspended during the rebellion in favor of a citizen of Louisiana because the courts of Wisconsin during the war were closed to the citizens of the states in rebellion, that is,

were not in fact closed, but the citizens of the States in rebellion were prohibited by law from enforcing their claims in court so long as the war lasted.

We will now refer to the cases which are cited with approval in these Wisconsin cases and followed.

In Knox against Cleveland, *supra*, three Pennsylvania cases are cited with approval:

Waln against Shearman, 8 Sergeant & Rawle, 357.

Comegys against Carley, 3 Watts, 280.

Miller against Keene, 5 Watts, 348.

In Waln against Shearman, 8 Sergeant & Rawle, 357, an act of 1804, section 3, provided, that no action for the recovery of lands sold for taxes should lie unless the same be brought within five years after the sale thereof for taxes.

A sale took place in 1806 and the suit of ejectment was brought in 1817; the defense was the above statute of limitations. It appears by the law of Pennsylvania that no action for the recovery of lands can be brought except against one in actual possession. In this case the purchaser neglected for a long time to take possession and in 1817, when suit was commenced, had not been in possession five years.

Held that the five years began to run, *not at the sale*, but from the time the purchaser enters into possession, although no such exception was provided for in the statute.

In delivering the opinion of the Court, Tilghman, C. J., says, this statute contains strong expressions,

"but at the same time it must be acknowleged that gen-
"eral expressions are sometimes to be modified * * *
"where they would produce a degree of injustice not to be
"attributed to the legislature. Suppose, now, that a pur-
"chaser at the sheriff's sale for taxes should decline to
"take possession for five years * * * could it

"be imagined that under such circumstances the man "whose land had been sold for taxes should be forever "barred the opportunity of showing that the sale "had been made contrary to law? Would it not "be more reasonable to say, that such monstrous "injuctice could never have been intented, and in such a "case the general expresssions in the act should be so "modified * * so as to allow the former owner "five years for bringing his action from the time "when he first might have brought it, viz.: from "the time of the purchaser's entering into possession. " * * * One thing seems certain, and that is, that it "was intended to allow five years for bringing an eject- "ment, and it was also intended that the person should be "forever barred who neglected to bring his action within "these five years. The question is, then, what is to be "the commencement of the period of limitation. The "best answer appears to be, *the first moment when the action "could have been brought*; that is the instant that possession "is taken by the purchaser."

Miller *vs.* Keene, 5 Watts, 348, decided in 1836, was an action of ejectment. The defense was a tax deed and the statute of limitations. In order to rebut the effect of the statute of limitations the plaintiff gave in evidence several letters of the defendants recognizing the plaintiff's title as good and offering to purchase when the terms should be made known, and it appeared that the lands were in actual occupancy by the defendants at the time they purchased at the tax sale.

In delivering the opinion of the Court, Gibson, C. J., says:

"Defense was made on the statute of limitations; and "the plaintiff, to show that the possession was not adverse, "gave evidence of written recognitions of the title with "offers to purchase during the pendency of an ejectment "which was withdrawn or not prosecuted, and the ques- "tion stood upon their legal effect. That the allegation "of adverse possession was effectually rebutted by them, "is a truth that can scarcely be illustrated. To suffer an "occupant to amuse the proprietor with professions of

"submission till the title were barred by time, and then "to set him at defiance, would give an effect to artifice "which the legislature certainly never intended to pro- "duce. It is not to be credited that the defendants in "the ejectment formerly pending were not saved by these "professions alone, for they made no show of defense. "The statute, it has been held, runs not to protect a fraud "secretly committed; and why should it run to protect a "fraud secretly meditated? Its justice is displayed in its "protection from litigation deferred by accident or design "till the foundation of the right is obscured or destroyed; "not in protection from the consequences of delay induced "by the party claiming it. In the latter case it is the "party out of possession who is the sufferer; and it would "be monstrous to bar him on pretense that his "forbearance may have been prejudicial to his "adversary. To him who has, in fact, no title, "delay is in every way advantageous, while to him whose "title depends on the existence of evanescent proofs, it "may be destructive, even within the period necessary to "complete the bar of the statute. If the occupant has "more than an adverse possession, let him not procrastin- "ate the event, but invite his adversary at once to a trial. "To be put off by stratagem while the props of the title "are consuming, is itself an injury; and if the annihila- "ting effect of the statute be added to it, it is evident that "it is called in but to complete the work of injustice. In "Comegys *vs.* Carley, 3 Watts, 280, it was said that pos- "session taken adversely by an agent of the owner, would "be an abuse of confidence, and, therefore, insufficient to "bar him; but it would certainly be no more so than the "present attempt to turn the plaintiff's forbearance to her "prejudice. It must be conceded that acknowledgments "of title are evidence of holding by permission; and it "remains but to say whether their effect is for the court or "for the jury. That the question is a mixed one, was "said in Comegys *vs.* Carley; and, in such cases, the truth "of the fact is for the one, while the effect of it is for the "other. On principle, however, the matter is entirely "plain; for the consequences of the acknowledgment, "being from policy an estoppel to preclude unfair dealing, "is necessarily a matter of law, and so powerful in its "conclusion as to prevent the jury from finding against it."

The many cases cited in Encking *vs.* Simmons, *supra*, decide that in actions at law for fraud the statute of limitations begins to run not when the fraud was committed, but from its discovery, and that, too, when there was no exception to that effect in the statutes themselves. There was a conflict of authority among the courts of the different states, as well as in England, when in actions at law for fraud the statute began to run, whether, when the fraud was committed, or when the fraud was discovered. The best authorities in this country, which were followed in the Supreme Court of the United States in the case of Bailey *vs.* Glover, hold that the statute begins to run only from the discovery of the fraud, and the courts have made this exception to the language of the statute of limitations as expressed in many decisions, because if the statute began to run from the time the fraud was committed, the tort-feasor might keep the fraud concealed for the full period of the statute of limitations, and the statute would then become an instrument of injustice and oppression which was never intended by its authors when it was enacted, and this exception in case of fraud was made by the courts because in conformity with the spirit and purpose sought to be accomplished in the enactment itself. Wisconsin wheels in line with other states, and with the better line of authorities repudiating the doctrine of New York, and some other states, as well as the doctrine of some English decisions, that the statute begins to run from the time the fraud was committed, regardless of the time when it was discovered.

The authorities cited in Ahnert *vs.* Zaun, *supra*, are decisions of the Supreme Court of the United States, which we will refer to in our discussion of how the decisions of that court have construed statutes of limitations.

2. In the Supreme Court of the United States.

The Supreme Court of the United States adopts a liberal course in its construction of statutes of limitations. It attempts by its decisions to discover what purpose was sought to be accomplished by the statute itself, and then interprets its enactments by its spirit. We find throughout, from the earliest day, that this court has uniformly made exceptions to statutes of limitations when the same fell within the spirit of the statute itself, although not specifically provided for, and has uniformly construed the statute as barring stale claims, but never a diligent creditor who is prevented by law, injunction, prohibition, appeal, war, insurrection, or the closing of courts, or any state of facts, which without his own negligence has prevented him from bringing his suit. We will show this by an unbroken line of authorities. We have arranged the cases in this court in their chronological order.

In Hopkirk against Bell, 3 Cranch., 454, it appeared that suit was brought in Virginia in 1803 by British subjects upon a debt contracted in 1773 and the defense

was the Virginia statute of limitations. It was admitted that if the period from 1774 until 1790 during which time by the acts of the Virginia Assembly, British subjects were prohibited from commencing suits should be excluded, then the statute of limitations had not run and the question for this Court was whether such acts of the assembly suspended the running of the statutes of limitations.

It was shown that by the treaty of peace with Great Britain it was agreed "that creditors of either side shall meet with no lawful impediment to the recovery of the full amount for *bona fide* debts heretofore contracted." Upon this showing this court held that the statute of limitations had not run, but was suspended so long as the war of the revolution lasted and also so long as by the acts of the Virginia Assembly British subjects were not permitted to sue in the courts of Virginia, although no exception to that effect was found in the Virginia statutes.

In *Richards vs. Maryland Insurance Co., 8 Cranch., 84,* the question at issue was whether the statute of limitations was suspended as to a second assignee in bankruptcy by the fact that a suit brought by the first assignee in bankruptcy abated by his death.

Johnson, J., page 92, delivering the opinion of the Court, says:

"In support of the action it was contended that the "former suit abated by the death of the first assignee; that "the right did not vest in his executors, because it was a "mere trust or agency; that the right of substituting the

"new assignees in the action is secured only in the case of "removal by the creditors; that this case is without the "statute of limitations, upon an equitable construction of "that statute. * * * We are of the opinion "that the plea of the statute of limitations must be "sustained. * * * Being satisfied that the "plaintiff has not brought himself within any one "of the exceptions which have been admitted to the "statute of limitations, and feeling no inclination to mul- "tiply those exceptions, they dispose of the case upon the "second ground alone. The cases which, though literally "within the words of the statute, have been held to be "without its spirit, are those only in which circumstances "intervened which rendered it impossible, or inconsistent "with known and established principles, that a cause of "action could be revived by the renewal of the contract, "or enforced by a suit of law within the time prescribed. "The object of the law is to secure the individual from the "machinations of dishonesty when attempted under the "advantages attendant upon lapse of time, the loss of papers "and death of witnesses. *But when cases present themselves "in which no laches can be imputed to the plaintiffs, but great "injustice would be done by applying to such cases, the effect of "the statute, the conclusion of reason and of the law, is that "such cases were not in the mind of the Legislature when "enacting that law.* Such are the cases of a want of parties, "plaintiff or defendant, whereby a temporary suspension "of legal remedy takes place. But in no case of a volun- "tary abandonment of an action has an exception to the "statute of limitations been supported, and such, we are "of the opinion, is the case before us."

The Court then decides that the right of action vested in the executor of the first assignee, and the failure to proceed with the suit was a voluntary abandonment.

In *Montgomery against Hernandez*,* 12 Wheaton, 129, it

*The question of law involved in this case, is stated by Justice Clifford in Hanger *vs.* Abbott (6 Wallace, 532), on page 541, in these

appeared that in November, 1823, suit was brought against a United States marshal in a State Court of Louisiana for money which he was ordered in June, 1817, in an Admiralty proceeding to pay over, and the defense was the six years' statute of limitations. The question was whether the running of the statute of limitations was suspended pending an appeal from the order to the Supreme Court of the United States, which in 1819 affirmed the order of the Court. It was held in the Supreme Court of Louisiana that during the appeal no suit could be brought against the marshal, and for that reason during the appeal the statute of limitations was suspended, although no such exception was provided for in the statute. The Supreme Court of the United States affirmed the decision of the lower court with these words: "This Court perfectly accords in opinion with the Supreme Court of the State."

This is found in Hernandez against Montgomery, 2 Martin, New Series, 422.

Justice Porter, after stating facts and disposing of certain questions of law which arose, said:

"The breach complained of here, took place in June, 1817. "and the suit was not commenced until November, 1823. "Six years had therefore elapsed, and if the statute should "be found to run against the plaintiffs from the time the "officer failed to do his duty, there is no doubt but the "present action is barred. We are satisfied, however, that "it did not. Its words are, that all suits must be com- "menced within six years after the right of action has "accrued. In the case before us, the rights of all con- "cerned were suspended by the appeal; and no one could "have commenced an action, until their claim was recog-

words: "Exceptions not mentioned in the statute have sometimes "been admitted and this Court held that the time which elapsed "while certain prior proceedings were suspended by appeal should "be deducted, as it appeared that the injured party in the mean- "time had no right to demand his money, or to sue for the recovery "of the same; and in view of these circumstances, the Court decided "that his right of action had not accrued, so as to bar it, although "not commenced within six years."

"nized by a decision of the Court. The right of action "then to the plaintiffs, although it accrued at the moment "of the breach, could not be exercised until the decree of "the appellate tribunal sustained their pretentions to "the property in litigation, and therefore it was only "from the date of that decree, that the prescription began "to run against them. This construction of the statute is "conformable to the general principles of law on this "subject; Pothier states that prescription only begins to "run from the time when the creditor has a right to "institute his demand, because no delay can be imputed "to him before that time, hence the maxim, contra non "valentem agere non currit prescriptio. The Supreme "Court of the United States declares it to be a general "rule, that a want of parties plaintiff, or defendant, "whereby a temporary suspension of legal remedy is "created, takes the case out of the statute of limitations. "Indeed, the idea of a man losing his right, by not bring-"ing an action, which it was impossible he could bring, "involves such a contradiction in itself, and leads to such "monstrous injustice, that nothing short of the most "positive law could authorize any tribunal to sanction "such a doctrine. Pothier, traité des obligations, 645; "Ibid. traité de prescription, Nos. 22 and 23; 8 Cranch., 84, "91; 12 Martin, 76."

In Mattingly against Boyd, 20 Howard, 128, the question was whether the running of the statute was suspended during the time that the commencement of a suit for the recovery of the money was enjoined in another suit. The lower court sustained the plea of the statute of limitations. Upon appeal this Court held that the period during which the commencement of the suit was restrained by the other suit should not be counted as a part of the period of limitations, because no suit could legally have been brought so long as the injunction in the other suit was pending.

This decision was made upon the statutes of Virginia, which did not contain any exception providing that the statute should not run whilst a suit was stayed by injunction.

In *Hanger vs. Abbott, 6 Wallace, 532 (1867)*, it was decided in the lower court that the statute of limitations of Arkansas was not suspended during the Civil War. The question in the Supreme Court was simply whether the "time during which the courts in Arkansas were closed "on account of the Rebellion was to be excluded from the "computation of time fixed by the Arkansas statute of "limitations, within which suits on contracts were to be "brought, *there being no exception by the terms of the statute "itself for any such case.*"

This Court reversed the judgment, and held that so long as the courts were closed the statute did not run, making an exception not provided for in the law.

Mr. Justice Clifford, in delivering the opinion of the Court, says:

"When our ancestors immigrated here, they brought "with them the statute of 21 Jac. I, c. 16, entitled 'An act "for limitation of actions, and for avoiding of suits in "law,' known as the statute of limitations. Proceedings "in courts of justice are usually determined by the *lex fori* "of the place where the suit is pending, including the "statutes of limitation, which are those of the country "where the suit is brought, and not those of the *lex loci* "*contractus*.

"Such statutes exist in all the states, and with few "exceptions they have been copied from the one brought "here in colonial times. They are statutes of repose to "quiet titles, to suppress fraud and to supply the defficiency "of proofs arising from the ambiguity, obscurity or an-"tiquity of transactions. They proceed also upon the pre-

"sumption that claims are extinguished whenever they "are not litigated in the proper forum within the pre- "scribed period, and they take away all solid ground of "complaint, because they rest on the negligence or laches "of the party himself. Persons within the age of 21 "years, *femes covert*, *non compos mentis*, persons imprisoned "or beyond the seas, were excepted out of the operation of "the third section of the act, and were allowed the same "period of time, after such disability was removed. Just "exceptions, indeed, are to be found in all such statutes, "but when examined it will appear that they were framed "to prevent injustice, and never to encourage laches or "to promote negligence. Cases where the courts of "justice are closed in consequence of insurrection or "rebellion, are not within the express terms of any "such exception. But the statute of limitations was "passed in 1623, more than a century before it came "to be understood that debts due to alien enemies were "not subject to confiscation.

"'Down to 1737,' says Chancellor Kent, 'the opin- "'ion of jurists was in favor of the right to confiscate, and "'many maintained that such debts were annulled by the "'declaration of war.'

"Regarding such debts as annulled by war, the law- "makers of that date never thought of making provision "for the collection of the same on the restoration of peace "between the belligerents. Commerce and civilization have "wrought great changes in the spirit of nations touching "the conduct of war, and in respect to the principles of "international law applicable to the subject."

* * * * * * * * *

"Individual debts, as a general remark, are no longer "the subject of confiscation, and the rule is universally "admitted that, if not confiscated during the war, the "return of peace brings with it both the right and the "remedy. Total inability on the part of an enemy "creditor to sustain any contract in the tribunals of the "other belligerent exists during war, but the restoration "of peace removes the disability, and opens the doors of "the courts. Absolute suspension of the right and prohibi- "tion to exercise it exists during war by the law of nations, "and, if so, then it is clear that peace cannot bring with it "the remedy if the war is of much duration, unless it also

"be held that the operation of the statute of limitations is "also suspended during the period, the creditor is pro- "hibited by the existence of the war, and the law of "nations, from enforcing his claim. Neither laches nor "fraud can be imputed in such a case, and none of the "reasons on which the statute is founded can possibly "apply, as the disability to sue becomes absolute by the "declaration of war, and is a conclusion of law. * * *

"The suspension of the remedy during war is so absolute "that courts of justice will not even grant a commission "to take testimony in an enemy's country, but when the "reason for the suspension ceases, the right to prosecute "revives, and the fact that the right had been suspended "constitutes no disability. When the courts of justice are "open, and judges and ministers of the same "may by law protect men from wrong and violence and "distribute justice to all, says Lord Coke, it is said to be a "time of peace, but when, by invasion, insurrection, rebel- "lion or such like, the peaceable course of justice is "disturbed and stopped, so as the courts of justice be, as it "were shut up *et silent leges inter arma* then it is said to be "time of war; and having described the conditions both "of war and peace, he adds emphatically, that if a man is "disseized in time of peace and the descent is cast in time "of war, this shall not take away the entry of the dis- "seizee, which is a direct authority for the plaintiffs in "this case.

"Text writers usually say, on the authority of the old "cases referred to, that the non-existence of courts, or "their being shut, is no answer to the bar of the statute of "limitations, but Plowden says that things happening by "an invincible necessity, though they be against common "law, or an act of Parliament, shall not be prejudicial. "That, therefore, to say that the courts were shut, is a "good excuse on voucher of record. Exceptions not "mentioned in the statutes have sometimes been admitted, "and this court held that the time which elapsed while "certain prior proceedings were suspended by appeal, "should be deducted, as it appeared that the injured party "in the meantime had no right to demand his money, or "to sue for the recovery of the same; and in view of those "circumstances, the Court decided that his right of action "had not accrued so as to bar it, although not com- "menced within six years. But the exception set up in

"this case stands upon much more solid reasons, as the "right to sue was suspended by the acts of the govern- "ment, for which all the citizens are responsible. Unless "the rule be so, then the citizens of a State may pay their "debts by entering into an insurrection or rebellion against "the government of the Union, if they are able to close "the courts, and to successfully resist the laws, until the "bar of the statute becomes complete, which cannot for a "moment be admitted. Peace restores the right and the "remedy, and as that cannot be if the limitation continues "to run during the period the creditor is rendered incapa- "ble to sue, it necessarily follows that the operation of the "statute is also suspended during the same period."

In the Protector, 9 Wallace, 687, it appeared that a resident of New York, filed a libel against the ship Protector in the District Court for Alabama. A decree dismissing the libel was pronounced in December, 1859. This decree was affirmed in the Circuit Court on April 5, 1861. By the 22d section of the Judicary Act of 1789, as interpreted by the act of March 3d, 1803, appeals could be taken to this Court within five years. An appeal was taken to this Court on July 28, 1869, more than eight years after the date of the decree appealed from. Motion was made in this Court by the respondent to dismiss the appeal on the ground that it was not brought within the time allowed by law.

This Court held that the appeal should not be dismissed, because the time during which the civil war lasted should be excluded, and extended the doctrine of Hanger against Abbott so as to extend the time in which appeals could be taken.

In Braun *vs.* Sauerwein, 10 Wallace, 218, the question at issue was whether the statute of limitations was sus-

pended during the time the plaintiff was prohibited by law from commencing his suit. The law prohibited a suit for the recovery of a tax illegally collected until after an appeal to and a decision by the commissioner of internal revenue. It was held by this Court that during the appeal to the commissioner, the Maryland statute of limitations was suspended, although it had already commenced to run and no such exception was provided for in the statute of limitations.

Mr. Justice Strong, in delivering the opinion of the Court, says (page 221):

"It is undoubtedly a general principle, that when a "statute of limitation has begun to run, a disability to "sue subsequently intervening does not stop its running, "even though the disability be one of those expressly "recognized in the statute itself. Notwithstanding this, "however, the courts in this country have engrafted upon "such statutes at least one implied exception. Thus, in "Hopkirk *vs.* Bell (3 Cranch., 454), this court held that "the treaty of peace of 1783, by which the independence "of the United States was acknowledged by Great Britain, "prevented the operation of a Virginia statute of limita- "tions upon debts due to British subjects, and contracted "before the treaty was made. In that case, though the "statute had begun to run before the commencement of "the war in 1775, the time during which it had thus run "was not allowed to be added to any time subsequent to "the treaty. This, perhaps, is not to be regarded as a "clearly judicial exception, incorporated into the Virginia "statute. It was rested upon the force of the treaty which "declared that creditors on either side (British or Ameri- "can) should meet with no lawful impediment to the "recovery of the full value, in sterling money, of all bona "fide debts theretofore contracted. The treaty, however, "was not the act of Virginia, and the suspension of the "statute's operation was by something outside of the "statute itself. But in Hanger *vs.* Abbott (6 Wallace, "532) it was ruled, after grave consideration, that the time "during which the courts of the recently rebellious States "were closed to the citizens of other States is, in suits

"brought by such citizens, to be excluded from the com-
"putation of the time fixed by statutes of limitation,
"within which only suits may be brought, and this
"though the statutes contain no such exception. In
"other words, it was held that the statutes of limitations
"of the insurrectionary States were suspended while the
"courts in those States were closed by the war. Similar
"decisions have been made in the State courts. They
"all rest on the ground that the creditor has been
"disabled to sue, by a superior power, without
"any default of his own, and, therefore, that none
"of the reasons which induced the enactment of the stat-
"utes apply to his case; that unless the statutes cease to
"run during the continuance of the supervening disability
"he is deprived of a portion of the time within which the
"law contemplated he might sue.

"It seems, therefore, to be established that the running
"of a statute of limitation may be suspended by causes
"not mentioned in the statute itself. Assuming, then,
"that the act of Congress did, for a time, stop the running
"of the Maryland statute against the plaintiff, the inquiry
"remains, how long did the suspension continue? To
"this there can be but one answer. Manifestly, only so
"long as he was prevented from suing by the act of
"Congress."

In *United States vs. Wiley, 11 Wallace, 508*, the United States sued Wiley upon his official bond. The cause of action arose in 1860, and suit was brought on the 15th of February, 1869. The defense was the six years' statute of limitations. The question at issue was the same as in Hanger *vs.* Abbott, whether the statute of limitations was suspended in the States during the civil war. This Court held that it would follow the decision of Hanger *vs.* Abbott, and that during the civil war the statute of limitations did not run.

Mr. Justice Strong, in delivering the opinion of the Court, says (page 513):

"In Hanger *vs.* Abbott it was decided that the effect "of the war was to suspend the running of statutes "of limitation, during its continuance, in suits between "the inhabitants of the loyal States and the inhabitants "of those in rebellion. The same doctrine was repeated "in substance in the Protector. It would answer no "good purpose to go behind the decisions and review the "reasons upon which they are founded. We are still of "the opinion that they rest upon sound principle. But it "is said those decisions only rule that the war suspended "the statutes' running against claims by one citizen upon "another, and that they do not relate to claims of the "government against its own citizens resident in rebel- "lious States. This may be conceded, but the same "reasons which justify the application of the rule to one "class of cases require its application to the other. True, "the *right* of a citizen to sue during the continuance of "the war was suspended, while the right of the govern- "ment remained unimpaired. But it is the loss of the "ability to sue rather than the loss of the right that "stops the running of the statute. The inability "may arise from a suspension of right, or from the closing "of the courts, but whatever the original cause, the "proximate and operative reason is that the claimant is "deprived of the power to institute his suit. Statutes of "limitations are indeed statutes of repose. They are "enacted upon the presumption that one having a well- "founded claim will not delay enforcing it beyond a "reasonable time, if he has the power to sue. Such "reasonable time is therefore defined and allowed. But "the basis of the presumption is gone whenever the "ability to resort to the courts has been taken away. In "such a case the creditor has not the time within which "to bring his suit that the statute contemplated he should "have. It is quite obvious that this is the case, as well "where the government is the creditor as where the "creditor is a citizen of the government, and if, therefore, "the running of the statute is suspended in favor of the "the citizen, with equal reason must it be in favor of the "citizen, with equal reason must it be in favor of the "government. There is also great force in the thought

"suggested by the observations made in Hanger *vs.* "Abbott, that unless the rule be so, the citizens of a State "may escape the payment of their debts to the govern- "ment by entering into an insurrection and rebellion, if "they are able to close the courts and successfully resist "the laws until the bar of the statute shall have become "complete. Such a doctrine is too unreasonable to be for "an instant admitted."

In Bailey against Glover, 21 Wallace, 342,* the question was whether an assignee in bankruptcy after the expiration of three years from his appointment could file a bill to set aside a fraudulent conveyance when he showed that the defendants had, by artifice and deceit, concealed from him the facts constituting the fraud until just before the commencement of the action.

The second section of the Bankrupt Act of 1867, provided that the assignee cannot maintain an action like the one in suit except within two years after the cause of action has accrued. No exception is made in the language of this statute of limitations, that the two years shall begin to run from the date of the discovery of the facts constituting the fraud.

Justice Miller, in delivering the opinion of the Court, says (page 346):

* * * * * * * * * *

"This is a statute of limitation. It is precisely like "other statutes of limitation and applies to all judicial "contests between the assignee and other persons touching "the property or rights of property of the bankrupt "transferable to or vested in the assignee, where the "interests are adverse and have so existed for more than "two years from the time the cause of action accrued, for "or against the assignee. * * * It is obviously one "of the purposes of the Bankrupt law that there should "be a speedy disposition of the bankrupt's assets. * * "* The act is filled with provisions for quick and sum-

* Cited with approval and followed in Rosenthal *vs.* Walker, 111 U. S., 191.

"mary disposal of questions. * * * But instead of "this, the inferior courts are filled with suits by or against "assignees * * *."

"To prevent this as much as possible, Congress has "said to the assignee, you shall commence no suit two "years after the cause of action has accrued to you. "* * *

"*But the appellant relies in this court upon another propo-*
"*sition, which has been very often applied by the courts under*
"*proper circumstances, in mitigation of the strict letter of gen-*
"*eral statutes of limitation, namely, that when the object of the*
"*suit is to obtain relief against a fraud, the bar of the statute*
"*does not commence to run until the fraud is discovered or be-*
"*comes known to the party injured by it.* * * * * * *
"*We hold that when there has been no negligence or laches on*
"*the part of a plaintiff in coming to the knowledge of the fraud,*
"*which is the foundation of the suit, and when the fraud has*
"*been concealed, or is of such character as to conceal itself, the*
"*statute does not begin to run until the fraud is discovered by,*
"*or becomes known to, the party suing, or those in privity with*
"*him.*"

These authorities show that the Supreme Court of the United States construes statutes of limitations by their spirit, and seeks to interpret them so as to accomplish the purpose for which they were enacted, and, with that end in view, so construes into the statutes exceptions not specially provided for in the statutes themselves.

So long as a foreigner (Hopkirk *vs.* Bell) was prohibited by the acts of the Virginia Assembly from commencing suits within the State, this Court holds the Virginia Statute of Limitations was suspended, although no such exception was found in the Virginia Statute; also that the Louisiana Statute of Limitations was suspended (Montgomery *vs.*

Hernandez) so long as by law the plaintiff was prohibited from commencing his suit because of the pendency of an appeal, although the Louisiana Statute contains no such exception; also that the Maryland Statute of Limitations (Braun *vs.* Sauerwein) was suspended by a suit against a collector of customs during the time the commencement of the suit was prohibited by the provision of law that no suit could be brought until an appeal and a decision by the commissioner of internal revenue, although the statute itself contained no such exception; so long, also, as the commencement of the suit was stayed by injunction (Mattingly *vs.* Boyd), the statute of Virginia would be suspended, although the statute itself contained no such exception; also so long as the courts of Arkansas (Hanger *vs.* Abbott) were closed by the pendency of the civil war the statute was suspended, although no such exception was provided for in the statute itself; also (the Protector) the time for taking an appeal is extended if on account of the civil war an appeal could not be perfected, although no exception was found in the statute to that effect. Also in actions for fraud (Bailey *vs.* Glover), this court held that the statute began to run, not from the time when the fraud was committed, but from its discovery, although no exception to that effect was found in the statute.

3. In other Courts and in other States.

In Devereaux *vs.* City of Brownsville, 29 Federal Reporter, 742, it appeared that the City of Brownsville had incurred an obligation, and that the Legislature of Tennessee then revoked the charter of the city, so that the

city remained, during the period of the statute of limitations, without any legal existence, and then, after the statute of limitations had run, organized the city under the name of a taxing district. Suit was brought against the new corporation, and the defense was the statute of limitations. Judge Hammond held that the statute of limitations did not run so long as the plaintiff was unable to commence his suit because of the want of a corporation in existence which could be sued.

Judge Hammond, in delivering the opinion of the Court, says (page 750):

"The next defense set up is that one of the judgments "is barred by the statute of limitations, it having been "more than ten years from the date of the judgment to "the suing out of this mandamus, although other like "writs have issued in the meantime. If the time elapsed "between the repeal of the charter and the reorganization "into a 'taxing district,' during which there was no organ- "ization to be sued, be excluded, the ten years have not "expired, and the bar has not attached. We have no "hesitation in holding that it should be excluded, pre- "cisely as the time occupied by our late war was excluded, "and for precisely the same reason. If a State, with the "deliberate and confessed purpose of doing that, repeals "the charter of a municipal corporation to enable it to "evade or avoid the writ of mandamus to enforce judg- "ments against it, thereby disables the plaintiff from pro- "ceeding in the case, the time of disability should not be "computed in the period of the statute of limitations. We "are aware of the stringency of the rule that courts will "not ingraft upon the statute exceptions growing out "of mere equitable considerations of hardship or injus- "tice, and the only doubt we have is whether the plaint- "iffs here are not put to a bill in equity to perpetually "enjoin the defendant corporation from pleading the "statute, as one might be for relief against any fraudu- "lent contrivance of a defendant to arrest or delay the "plaintiff's proceedings against him. But since the act "of arrest complained of here is that of the State itself, "by its own legislation, and through its paramount

"authority, which none can resist, we find no difficulty "in implying from the new legislation and governmental "conduct of the State an intention to exclude the time "of disability from the statute, as is done in case of "war. Hanger *vs.* Abbott, 6 Wall., 532; U. S. *vs.* Wiley, 11 "Wall, 508, 513—where it was ruled that, although the "right to sue was unimpaired, the 'loss of the ability to "sue, rather than the loss of the right, stops the running "of the statute.' And in Braun *vs.* Sauerwein, 10 Wall., "218, where the limitation was suspended by the opera- "tion of an act of Congress, just as we think this legisla- "tion operates, Mr. Justice Strong remarks of the "decisions:

" 'They all rest on the ground that the creditor has been " 'disabled to sue, by a superior power, without any " 'default of his own, and therefore that none of the " 'reasons which induce the enactment of the statutes " 'apply to his case; that, unless the statutes cease to run " 'during the continuance of the supervening disability " 'he is deprived of a portion of the time within which " 'the law contemplated he might sue.'

"There are other applications of the doctrine quite as "familiar, as in cases of delay pending appeals. Mont- "gomery *vs.* Hernandez, 12 Wheat., 129, 134."

In *Greenwald vs. Appell, 17 Federal Reporter, 140*, action was brought upon certain promissory notes, and a demurrer was interposed, which raises the question whether the action is barred by the statute of limitations of Colorado. The defendant, Appell, was adjudicated bankrupt in the State of Pennsylvania some years previous, and proceedings in bankruptcy were continued for years, and were still pending, but Appell has never been discharged. The theory of the statute was that, having delayed for an unreasonable time to apply for his discharge, the right of action against him upon these debts, which was suspended by the commencement of proceedings in bankruptcy, has revived. And the question then arises whether, during the time that the right of action

was suspended by the bankruptcy proceedings, the statute of limitations continued to run in favor of the bankrupt.

Judge McCrary, in the opinion, says (page 140):

"That it (brankruptcy) suspends the right to sue, by "the very terms of the bankrupt act, is not disputed. After "the commencement of proceedings in bankruptcy against "the debtor, and after an adjudication in bankruptcy, no "suit can be brought against him in any court; certainly, "not without the consent of the bankruptcy court. It "amounts in other words, to an injunction against any "proceedings against the bankrupt to enforce his contracts "in the courts of the country. If he is not discharged, "then the action revives after the proceedings in bank-"ruptcy are ended.

"The old rule upon this subject was very strict, and "many authorities have been cited which clearly hold "that if the statute of limitations begins to run, nothing "will stop its running except something that is expressly "provided in the statute itself; and it was formerly help "that even a state of war was not sufficient; that an "injunction against the creditor from bringing a suit was "not sufficient to suspend the statute, and that it con-"tinued to run notwithstanding these things. That rule "will be found laid down in Angell & Ames on Limita-"tions, and, I think, in some other standard authorities. "But the more modern rule is otherwise. It has been settled "now, by the decisions of the supreme court of the "United States, that there are certain exceptions to the "statute of limitations other than those which are ex-"pressed in the statutes themselves. *The old rule has been "qualified by later and better rulings, especially in the supreme "court of the United States. These later decisions hold that an "exception may be allowed where a party is prevented by some "superior law or public calamity, such as war, from bringing the "suit. The cases growing out of the late rebellion are illustra-"tions of this doctrine. Although none of the statutes of limit-"ations had any exceptions which applied to the case of a debtor "who was within the lines of the rebellion, and therefore beyond "the reach of civil process, so he could not be sued, the supreme "court, in a series of cases, laid down the doctrine that that was "an exception which was created by the necessities of the case.*

"And this exception has been established by the case of "Bailey *vs.* Glover, 21 Wall., 342. That is a case which

"arose under the bankrupt act of 1867, which has a limita-
"tion clause embodied in its second section. That clause
"provides that no suit at law or in equity shall in any case
"be maintained, etc., 'unless the same shall be brought
"within two years from the time the cause of action
"accrued.' That is as broad as sweeping, and compre-
"hensive as any statute of limitations can be made. It
"applied to suits both in law and in equity; it applies to
"all classes of suits, and declares that no suit shall be
"maintained unless it be brought within two years. The
"question arose whether, under that statute, courts would
"create an exception in the case of concealed fraud. In
"an elaborate opinion by Mr. Justice Miller, the supreme
"court laid down the rule that this was an exception, not-
"withstanding the clear and comprehensive terms of the
"statute itself. The ground upon which these later
"rulings, is well stated in a sentence which I will read
"from the case of U. S. *vs.* Wiley, 11 Wall., 513:

"'Statutes of limitations are indeed statutes of repose.
"They are enacted upon the presumption that one hav-
"ing a well-founded claim will not delay enforcing it
"beyond a reasonable time if he has the power to sue.
"Such reasonable time is, therefore, defined and allowed.
"But *the basis of the presumption is gone whenever the ability*
"*to resort to the courts has been taken away.* In such a case
"the creditor has not the time within which to bring his
"suit that the statute contemplated he should have.' I
"think this case falls within that doctrine. *The right to*
"*sue was undoubtedly suspended during the pendency of pro-*
"*ceedings in bankruptcy, and to say that the statute continued to*
"*run, would be to say that the plaintiff is deprived of his right*
"*to sue, without the slightest fault on his part.*"

The statute 21 James, 1, c. 16, Sub-division 7, provides that if any person at the time the cause of action accrues shall be beyond the seas, then such person shall be at liberty to bring the action within the time limited after he shall have returned from beyond the seas.

In Townsend against Deacon, 2 Exchequer Reports, 706, it appeared that a person entitled to bring the action died beyond the seas, where he had resided since the cause of action accrued. His executor brought the action within six years after his death. It was held that, although the statute contained no such exception, the executor could maintain the action within the period of limitation after the death of the person.

The statute, 4 Anne, c. 16, par. 19, provides that "if "any person against whom there * shall be * * any "cause of action * * * shall be, at the time any such "cause of suit or action, beyond the seas, that then such "person shall be at liberty to bring the said action after "their return from beyond the seas," within the period of limitations prescribed.

In Forbes *vs.* Smith, 11 Exchequer Reports, 161, the question was whether under this statute a suit could be brought after the period of limitation had run, but before the defendant had returned from beyond the seas.

Pollock, C. B., in delivering the opinion, says:

"We ought to put the same construction on the 4 "Anne, c. 16, s. 19, as has been put on the 21 Jac. 1, c. 16, "s. 7; and the case of Townsend *vs.* Deacon certainly "justifies a departure from the strict language of the "statute, because if an action may be brought by the "personal representative of a person who has never re- "turned from abroad, it follows in this case that, although "the defendant has never returned, he is liable to be sued, "yet that is inconsistent with the notion that the 4 Anne, "c. 16, s. 19, gives a new cause of action on the defend- "ant's return. No doubt the argument of Mr. Quain is, "as to the letter, perfectly correct; and if the statute is to "be construed without reference to the subject-matter or

"other statutes and decisions, and without regard to the "construction which should be given to it in order to "make it consistent with law and common sense, his argu- "ment ought to prevail. If the mere language is to be "taken without reference to its meaning and general in- "tention, it would certainly seem as if the being at liberty "to bring an action after the defendant's return was in- "consistent with the power to bring it before his return. "* * * The construction of the statute which I adopt "is this: The plaintiff shall have, for the purpose of "suit, any time not exceeding six years from the return of "the defendant to this country; but if he chooses to sue "the defendant before his return, he may take that "course."

The statutes of limitations of the different States, particularly New York, Massachusetts and Wisconsin, contain this provision:

"If, when the cause of action shall accrue against any "person, he shall be out of the State, such action may be "commenced within the times herein respectively limited, "*after the return of such a person into this State.*"

This statute, if construed by its language alone, would apply only to residents who were absent when the cause of action accrued and not to non-residents who were out of the State when the cause of action accrued and afterwards removed into the State. If the statute were thus literally construed, an absent non-resident would have a great advantage over an absent resident, because the statute would not be suspended during his absence, so that to avoid this injustice, the courts of last resort in Massachusetts, New York and Wisconsin have construed this statute to apply to non-residents as well as residents.

Ruggles *vs.* Keeler, 3 Johnson, 263.

Fowler *vs.* Hunt, 10 Johnson, 464.
Belton *vs.* Babson, 6 Allen, 322–324.
Whitcomb against Keator, 59 Wisconsin, 609.
Parker *vs.* Kelly, 61 Wis., 552.

The statutes of many States contain this provision:

"If after a cause of action shall accrue against any "person, he shall *depart from and reside out of* this State, "the time of his absence should not be deemed or taken "as any part of the time limited for the commencement "of such action."

A literal construction of this statute would be that the running of the statute of limitations would be suspended when the debtor was both absent and resided out of the State and would not be suspended if he leave a residence within the State, although absent. This construction might work injustice because a debtor might retain his residence in the State and be absent the entire period of limitation and yet his residence not be such as would entitle a creditor to commence suit against him in his absence by leaving the process at his residence (last and usual place of abode). In order to prevent this injustice, the courts have refused to construe this statute in a literal manner, but hold the statute as suspended unless the absent debtor leave such a residence within the State so that process can be served upon him by leaving the process at such residence.

Hackett *vs.* Kendall, 23 Vermont, 275.
Ward *vs.* Cole, 32 New Hampshire, 452.
Penley *vs.* Waterhouse, 1 Iowa, 498.

Hodges *vs.* Jones, 19 N. W. Rept., 675 (Iowa).
Wood on Limitations, par. 244, 245.

In many States the statutes provide that if an injunction prevents the bringing of an action, the running of the statute of limitations is suspended so long as the injunction continues. Many States, however, do not have this provision of law, and the question arose, what would be the plaintiff's remedy if he were prevented by an injunction from commencing his suit until after the statute of limitations had run? and it was held that courts of equity would enjoin the party who had procured the injunction from setting up the defense of the statute of limitations. Courts thus made an exception to the statute of limitations when the statute itself did not contain the same.

Barker *vs.* Millard, 16 Wend. (N. Y.), 572.
Robertson *vs.* Alford, 13 Smedes & Marshall, 509.
Ingraham *vs.* Regan, 23 Miss., 213.
Rice *vs.* Lawan, 2 Bibb. (Ky.), 149.
Doughty *vs.* Doughty, 10 N. J. Eq., 347.
Chemical Nat. Bank *vs.* Kishnell, 32 Fed. Rept., 424.
Norris *vs.* Haggins, 28 id., 282.
Wood on Limitations, par. 243.

In New York disputes arose in reference to the title in lands in Onondaga County, and the legislature passed an act whereby commissioners were appointed to adjust the titles. The award of the commissioners was to be final unless the party aggrieved, within three years after the award, brought his suit to recover the land. Neither party could bring ejectment under other laws of New York until the other party went into possession, and, although the statute provided that the award should be final unless the aggrieved party, within three years after the award, brought his suit to recover the land, that this statute of limitations did not commence to run until the other party was in possession of the land, thus making clearly the exception to the statute which was not found therein.

Jackson *vs.* Huntley, 5 Johnson Repts., 65.
Jackson *vs.* McKee, 8 Johnson Repts., 429.

In Planters' Bank against Bank of Alexandria, 10 Gill & Johnson, 346, it appeared that the Legislature of Maryland revoked the charter of the defendant bank and afterwards restored it. Held, that the time within which the charter of the defendant bank was revoked could not be counted as a part of the period of the statute of limitations, because during that period the defendant bank could not be sued, although no such exception was found in the Maryland statute of limitations.

In Bradford, administrator, against M'Lemore, 3 Yerger, 318, it appeared that by the statute of Tennessee, actions for claims against the deceased had to be commenced against the administrator within two years after an administrator had qualified. No exception was made by the statute in reference to claims not due, but still it was held that the two years began to run upon claims not due at the time the administrator qualified, began to run from the date of the maturity of the claim. Chief Justice Catron, in delivering the opinion of the Court, said that the bar of the statute would not commence to run until there was a person capable of suing and a person who could be sued.

In South Carolina and Mississippi it was provided by statute that no suit could be brought against an administrator until a given period after the death of the intestate. The statutes contained no provision that this period during which a commencement of suits was prohibited should be excluded from the calculation of the period within which suits could be brought under the general statutes of limitations. Notwithstanding that fact, the courts in those States held that the period during which the commencement of suits was prohibited should not be included in the calculation.

"Where the disability grows out of some positive "statutory provision, it seems but right to exclude the "time during which such temporary disability continues "from the computation. To authorize the application of "the statute there must be an existing cause of action, a "party to sue and one liable to be sued."

Dowell *vs.* Weber, 2 Smedes & Marshall, 452.
Moses *vs.* Richard, 2 Nott & McCord, 259.

V. The commencement of the action having been stayed by a statutory prohibition, the time of the continuance of the prohibition shall not be a part of the time limited for the commencement of the action. It is so enacted in Section 4236 of R. S. of Wisconsin for 1878.*

Since the consolidated charter of 1865 a suit could only be commenced against the City of Watertown by serving process *upon its mayor*, and up to 1870 and 1871 there could be no vacancy in the office of mayor, because a mayor held his office until his successor was elected and qualified, but since it was provided by law that the mayor could resign his office and that his resignation would take effect from the time he filed the same with the city clerk, the legislature intended to allow and provided for a "vacancy" in the office of mayor. The law, by permitting a "vacancy" in the office of mayor, ipso facto prohibited during such vacancy the commencement of suits, because no suit could be commenced against the city so long as the office of mayor was vacant, as process must be served upon the mayor. So long, then, as the office of mayor remains "vacant" no suit can be commenced against the city. The law permitting a vacancy in the office of mayor, absolutely prohibits the commencement of suits so long as such vacancy continues. During such legal prohibition of the commencement of suits, the statute

* A similar provision is found in Section 33 of Chapter 138 of the Revised Statutes of Wisconsin for 1858.

of limitations does not run. This is provided for in our Statute of Limitations.

*Section 4236 of the Revised Statutes of 1878 provides:

"When the commencement of an action shall be "stayed by * * * statutory prohibition, the time of "the continuance of the * * * prohibition shall not "be part of the time limited for the commencement of the action."

To the same effect Section 33 of Chapter 138 of the Revised Statutes of Wisconsin for 1858.

This is virtually what is decided without such a statute in

Hopkirk *vs.* Bell, 3 Cranch., 454.

Montgomery *vs.* Hernandez, 12 Wheaton, 129.

Braun *vs.* Sauerwein, 10 Wallace, 218.

If the time of the continuance of the prohibition shall not be part of the time limited for the commencement of the action, then under the allegations of the complaint such prohibition has continued since March 1st, 1873, and not one of the bonds or coupons declared upon are outlawed.

VI. The defendant City of Watertown is estopped by its own conduct from taking advantage of the statute of limitations, as it will not be allowed to take advantage of its own wrong.

It is well settled by authority that a promise not to avail one's self of the statute of limitations, if founded

*New York has the same provision in its statutes. Section 406 of the Code of Civil Procedure. In Brehm *vs.* City of New York, 104 N. Y., 187, the cause of action arose December 4th, 1871, which would have been outlawed on December 4th, 1877. On November 17th, 1877, plaintiff presented his claim to the comptroller of the city for allowance and began suit on December 18th, 1877. Defense

upon a good consideration, will prevent a party taking advantage of the statute of limitations.

Randon *vs.* Toby, 11 Howard, 517,

and the many cases cited in section 76, page 181, notes 2 and 3 of Wood on Limitations.

As expressed by Mr. Justice Grier in delivering the opinion of the Court in Randon *vs.* Toby, referring to the agreement, "that no advantage should be taken or any "plea of the statute of limitations be made to avoid the "payment of the notes (page 519), it operated by way of "estoppel in *pais* to a defense under the statute of limita- "tions; otherwise the defendant would gain the advantage "by his own fraud or put the plaintiff to an action on the "agreement. On one or the other of these principles the "doctrine of estoppel has its foundation. The plea of the "statute is a breach of the agreement and to avoid circu- "ity of action it may be set up in avoidance of the plea."

If by contract a party can agree not to take advantage of the statute of limitations, so also by fraudulent conduct can a party so act as to contain in the conduct itself an implied promise not to take advantage of the statute of limitations. This is an elementary principle recognized under many different state of facts as in the many cases at law where a party waives a tort and sues upon an implied contract. This principle is recognized in Wisconsin as applying to periods of limitation.

In Killips *vs.* The Putnam Fire Insurance Company, 28 Wis., 472, the usual one-year limitation clause found in policies of insurance was the defense in the action and it was held by the Supreme Court of Wisconsin, that when the insurance company, by any act or omission, induced the assured to suspend for a time the performance

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was the statute of limitations, but as the charter of the city prohibited the commencement of suit until thirty days after such presentation, it was held that the running of the statute of limitations was suspended during those thirty days under Section 406 of the Code, and that therefore the action was not barred.

of acts required on his part after a loss, such time should not be reckoned as a part of the period to which the right of action is limited.

Mr. Justice Lyon, in delivering the opinion of the Court, says:

"It does not seem to require much argument to demonstrate that if, by any act or omission of the responsible "officers and agents of the defendant, the plaintiff should "be induced to suspend action in the premises for a given "time, such time should not be deemed a part of the "twelve months to which his right of action is limited "by the original contract. To hold otherwise would be, "in many cases, to allow a person to take advantage of his "own wrong. Cases may readily be supposed where, by "delays in passing upon the sufficiency of proofs of loss, "in investigating losses, or in replying to communications "by general objections to proofs, refusing to specify "wherein they are defective, and thus compelling the "claimant to grope his way in the dark, and find out as "best he may wherein he has come short of fulfilling the "requirements of his policy, and, by many other means, "the agents and officers of an insurance company might, "without committing any act which the law would adjudge "fraudulent, so embarrass the claimant that he would be "entirely unable to make satisfactory proofs of his loss "within the time which his contract gives him for that "purpose, and yet be entirely free from any laches "whatever. The idea that the remedy on the policy may "be lost under such circumstances is not to be entertained "for a moment. The plainest principles of justice demand "that the time thus lost by the plaintiff, without "any fault on his part, but through the fault of the "defendant, should be added to the time within which "they contracted in the first instance that the action "should be commenced and the plaintiff be not barred of "his remedy on the policy until such additional time has "expired."

This case has been followed and approved by numerous adjudications of the Supreme Court of Wisconsin.

See also Black *vs.* Winnesheik Insurance Company, 31 Wis., 74.

In Andrae against Redfield, 98 U. S., page 225, the question at issue was whether the defendant could take advantage of the statute of limitations, it being claimed by the plaintiff that defendant's fraudulent conduct had induced him to delay bringing suit until the statute of limitations had run. It does not seem to be questioned in the decision as rendered but that such conduct would prevent the defendant taking advantage of the statute of limitations. The court was divided, not upon this question of law, but whether upon the facts the defendant had been guilty of any fraud.

If this principle of law be correct, the City of Watertown has either by its conduct waived the right to take advantage of the statute of limitations, or is estopped from taking advantage of it. This conduct has consisted, as we have shown above, of making use of the many fraudulent devices alleged in the amendments to the complaint, so as to avoid the service of the process, and the Court must hold that by using such fraudulent devices to avoid the service of process that the city has estopped itself from, or has waived the advantage of, the statute of limitations, as it cannot take advantage of its own wrong.

CONCLUSION.

In 1867 Rees, a citizen of Illinois, recovered two judgments against the City of Watertown on municipal bonds. In 1868 he procured a peremptory writ of mandamus directing the City of Watertown to levy and collect a tax upon the taxable property of the city to pay the judgment, but before the writ could be served a majority of the members of the common council resigned their offices. In 1869 another writ of mandamus was issued to the new board of aldermen, which writ was served on all

the aldermen except one Holger. No steps were taken to comply with the requisition of the writ, and certain of the aldermen thereupon resigned their offices, leaving in office a quorum, including Holger. The Court then made an order that the aldermen should at once levy and collect a tax, but before the order could be served on Holger he resigned his office, and again the board was without a quorum. In 1870 Rees obtained a third writ of mandamus, which resulted as the former ones had done, and by the same means on the part of the officers of the city. A special election was ordered to be held to fill the vacancies of the aldermen so resigning, but no votes were cast except three in one ward, and the person for whom they were cast refused to qualify. Rees then filed a bil in equity setting forth the above facts, and that his judgments had not been paid. The bill set forth certain acts of the legislature which, it was alleged, were intended to aid the city in evading the payment of its debts, and which had had that effect. The bill was filed against about fifty citizens and tax-payers of the City of Watertown, and prayed that the court should subject the taxable property of the city to the payment of the judgments, and that the marshal of the district might be empowered to seize and sell so much of the property of the citizens as might be necessary.

The case was carried to this Court on certificate of divided opinion. This Court * was also divided in opinion, the majority of the Court being of the opinion, however, that the bill in equity could not be maintained because there was an adequate remedy at law.

Mr. Justice Hunt, in delivering the opinion of the Court (pages 124 and 125), says:

* Rees against The City of Watertown, 19 Wallace, 107.

"It is conceded, and the authorities are too abundant "to admit a question, that there is no chancery jurisdiction "where there is an adequate remedy at law. The writ of "mandamus is, no doubt, the regular remedy in a case "like the present, and ordinarily it is adequate and its re- "sults are satisfactory. The plaintiff alleges, however, in "the present case, that he has issued such a writ on three "different occasions; that by means of the aid afforded "by the legislature and by the devices and contrivances "set forth in the bill, the writs have been fruitless; that, "in fact, they afford him no remedy. The remedy is in "law and in theory adequate and perfect. The difficulty "is in its execution only. The want of a remedy and the "inability to obtain the fruits of a remedy are quite dis- "tinct, and yet they are confounded in the present pro- "ceeding. To illustrate: the writ of habere facias pos- "sessionem is the established remedy to obtain the fruits of "a judgment for the plaintiff in ejectment. It is a full, "adequate, and complete remedy. Not many years since "there existed in Central New York combinations of set- "tlers and tenants, disguised as Indians, and calling them- "selves such, who resisted the execution of this process in "their counties, and so effectually that for some years no "landlord could gain possession of his land. There was "a perfect remedy at law, but through fraud, violence, or "crime its execution was prevented. It will hardly be "argued that this state of things gave authority to invoke "the extraordinary aid of a court of chancery. The en- "forcement of the legal remedies was temporarily sus- "pended by means of illegal violence, but the remedies "remained as before. It was the case of a miniature "revolution. The courts of law lost no power, the court "of chancery gained none. The present case stands upon "the same principle. *The legal remedy is adequate and com- "plete, and time and the law must perfect its execution.*"

"Entertaining the opinion that the plaintiff has been "unreasonably obstructed in the pursuit of his legal reme- "dies, we should be quite willing to give him the aid re- "quested if the law permitted it. We cannot, however, "find authority for so doing, and we acquiesce in the con- "clusion of the Court below that the bill must be "dismissed."

In the case at bar, we claim the enforcement of our

legal remedies was temporarily suspended by means of illegal violence and that the remedies remain as before. It was a case of miniature revolution. If the position taken by defendant in error be correct, "time and the law" have permitted the City of Watertown to illegally repudiate its honest debts. This Court says that our legal remedy has been *adequate and complete, and the time and the law must perfect its execution.* We have waited a long *time*, and we now appeal to the law to *perfect its execution.*

Respectfully submitted,

GEORGE P. MILLER,
Of Counsel for Plaintiffs.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

January 1, 1889.

Supreme Court of the United States.

—O—

OCTOBER TERM, 1888.

NO. 200.

RUFUS P. SPAULDING, ET. AL., EXECUTORS OF WILLIAM S. PIERSON,

Plaintiffs in Error,

vs.

THE CITY OF WATERTOWN,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

GEORGE W. BIRD,
DANIEL HALL,
Attorneys for Defendant in Error

Supreme Court of the United States.

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RUFUS P. SPAULDING, SAMUEL H. ALLEN, EDWIN P. DEXTER, BENNETT R. ALLEN AND HERMAN COFFIN, EXECUTORS OF WILLIAM S. PIERSON, DECEASED, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

NO. 200.

The record shows that on the 3rd day of March, 1873, a summons issued out of the Circuit Court for the Western District of Wisconsin against said city for money demands on contract. William S. Pierson is the Plaintiff named, Fol. 7. March 6, 1873 the Marshal made return thereon that he had served the same by delivering a copy to August Tauck, city clerk, and Fred. Meyer, city treasurer The measures taken to set this service aside, Fol. 12 to 17, bad on its face, it is needless to state, the law then requiring the service to have been made on the mayor, Sec. 8 of Chap. 9, of the charter. Chap. 233, laws of 1865, page 301. Next follows the ex-parte proceedings and order of June 19, 1883, Fol. 20, to revise this action, never commenced. in the name of the present Plaintiffs as the executors of said Pierson's will, Fol. 17 to 21. Then without reference to former proceedings appears the original complaint, calling it a "supplemental" complaint in the name as Plaintiffs of these Plaintiffs in error, Fol. 22 to 80.

Pursuant to the order of revivor made the 19th day of June, 1883, Fol. 20, a summons antedated was first issued on the same day in the name of the present

Plaintiffs in Error as the Plaintiffs therein, Fol. 81, and on the 26th day of June, 1883, the marshal made the return of service thereon found at Fol. 84. July 14, 1883, Defendant appeared in the action and demanded a copy of the complaint, Fol. 85. After the usual introductory averments, Fol. 22, the complaint sets out 95 separate causes of action on coupons of bonds, all of which coupons except two for $40 each became due before, and most of them a long time before, the passage and taking effect of the six years statute of limitations, to-wit: Chap. 53 of the general laws of Wisconsin of 1872, published April 3, 1872, and held valid in Koshkonong vs. Burton, 104 U. S. 668.

A summary of all these causes of action is found at Fol. 76 to 80, in the demand for judgment. On said last two maturing coupons said six years statute of limitations had been running from January 1, 1873 down to the first day of March, 1873, the first date mentioned in the Plaintiffs' amended complaint, which is as follows, to-wit: 2 A – 79

"Now come the above-named Plaintiffs, by Finches, Lynde & Miller, their attorneys, and amend, as of course, their complaint heretofore served and filed in the above entitled cause, by making the following additions thereto, to-wit:

First. After paragraph tenth of said complaint add the following allegations: Said Plaintiffs allege, on information and belief, that said Defendant, The City of Watertown, and the officers, agents, citizens and residents of said city did, subsequent to the 1st day of March, A. D. 1873, conspire together and with each other, and ever since have conspired together and with each other, for the purpose and with the preconceived intent and design to defraud these Plaintiffs and all other owners and holders of the bonds and coupons to such bonds, issued by said city and to prevent these Plaintiffs and the other owners and holders of such

bonds and coupons from obtaining the service of process on said city.

Said Plaintiffs further allege, on information and belief, that each year since the 1st day of March, 1873, a mayor of said city was elected, as required by law, but said mayor each year, with the intent and design aforesaid, qualified as hereinafter mentioned and immediately thereafter placed his resignation in the hands of the city clerk of said city, to be filed by him in case of emergency and to take effect accordingly.

Said Plaintiffs further allege, on information and belief, that each year since the 1st day of March, 1873, after the mayor and members of the common council had been elected, they and each of them failed to qualify until they had assembled together in a secret place, with locked doors, unknown to the people at large and to these Plaintiffs, and with persons on watch to inform them of the approach of any person or persons, and then and there, if unmolested, the mayor and members of the common council, qualified as required by law, transacted for said defendant city certain necessary business and thereafter immediately filed with the city clerk of said city their respective resignations, to take effect immediately, and which resignations went immediately into effect.

Said Plaintiffs further allege that since the 1st day of March, 1873, they have employed attorneys and agents for the purpose of ascertaining who was the mayor or acting mayor or chairman of the common council or chairman of the board of street commissioners and for the purpose of having process served on said city, but owing to said conspiracy, as these Plaintiffs are informed and believe, since the 1st day of March, 1873, there has been no mayor of said city, except each year for a few hours at such secret and concealed meetings, and the common council of said city, with said

fraudulent intent and design, has failed each year to elect a chairman of said common council, and since said last mentioned date there has been no person who was acting mayor and no chairman of the board of street commissioners.

Said Plaintiffs further allege that in the above-entitled action said William S. Pierson, deceased, on or about the 1st day of March, 1873, filed a præcipe for summons and an undertaking for costs, and a summons was issued in due conformity to law and placed in the hands of the United States Marshal for service, and that on or about March 2, 1873, the said Marshal, after due and diligent search and inquiry, served the said summons on those persons whom, according to the best information he could derive, he had ascertained to be the mayor and city clerk of the city of Watertown, and on the same day returned the said summons as served according to law; that on March 25, 1873, the said city of Watertown appeared specially in said action for the purpose of moving to set aside the service of said summons on the ground that the persons on whom said summons had been served were not, in fact, the mayor and city clerk of said city; that on April 8, 1873, the said motion came on to be heard, and this court ordered that the service of said summons be set aside for the reason that the persons so served were not the mayor and city clerk of said city, and ordered that the said summons be returned to said marshal to be served according to law; that since said date the said marshal has not been able to ascertain who were the mayor and city clerk or mayor or city clerk of said city or the persons on whom process could be served.

Said Plaintiffs further allege that, notwithstanding they have used due diligence and have hired attorneys and agents for the purpose of having process served on said city, they have been unable to this date to serve or have served the summons in this action on the mayor of

said city or on any person who by law should exercise the functions of mayor of said city.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

To the whole complaint as thus amended; the Defendant, by its amended answer to the amended complaint. Fol. 100, interposed a general denial to all matters contained in said amended complaint, which covers everything therein, except the admission of the averment of the annual election of a mayor of said city, and except the averment that William S Pierson once tried, as aforesaid, by the marshal, to get service on said city. Then follow certain admissions and averments, all relating to the original, called the "supplemental" complaint, not material to the issue here.

Next follows the defense to the whole of Planitiffs' action by the plea of the statute of limitations, Fol. 104, as follows, to wit:

"Fifth. And this the said Defendant, for a further and separate defense, which it will insist upon herein to said action and to the whole thereof and to each and every cause of action set forth in said amended complaint, avers and alleges, that neither the said action nor any of the causes of action stated in said amended complaint accrued within the six years next before the said 19th day of June, 1883, nor on nor since the day and year last aforesaid; that on or after and not before the said 19th day of June, 1883, the summons herein last aboved mentioned was first delivered to the United States' Marshal for service or to be served on this Defendant, and that the same never was or had been delivered to such marshal or to any officer or person for service or to be served on this Defendant or otherwise before said 19th day of June, 1883; and that neither this

said action nor any of the causes of action in said amended complaint stated, nor any part thereof, accrued within six years before the commencement of this, the above-entitled action, and that the said action was not commenced before the said 19th day of June, A. D. 1883, nor was it commenced within the six years limited by law for the commencement thereof after the same accrued, and is barred, the whole thereof, by the statutes of limitations of the State of Wisconsin; that as to all the bonds, interest warrants, and coupons, described in said amended complaint, and as to each and every one of said bonds, interest warrants, and coupons the said Defendant saith and avers that each and all of said several causes of action in said amended complaint stated, did not nor did any or either of them accrue thereon within the six years next before the commencement of this action, and that this said action and the whole and every part thereof is barred by the statute of limitations of the State of Wisconsin.

GEORGE W. BIRD,
DANIEL HALL,
Defendant's Attorneys.

To this plea the Plaintiffs interposed their demurrer as follows, to-wit: Fol. 106.

"Now come the above named Plaintiffs, by Finches, Lynde & Miller, their attorneys, and demur to the defense in the Defendant's amended answer contained, to-wit, to the defense of the statute of limitations, for the reason that it appears upon the face thereof that it does not state facts sufficient to constitute a defense.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

June term, 1884, August 27, the demurrer was overruled and Plaintiffs given 20 days in which to amend.

Fol. 107, and judgment ordered in case of default, for Defendant. Within the 20 days the Plaintiff served another amended complaint on Defendant's attorneys, Sept. 11, 1884, and withdrew it Sept. 15, 1884, Fol. 108, as Geo. W. Bird's affidavit shows. At Fol. 108-9-10, are the affidavit, notice and proceeding to the entry of judgment. At Fol. 111, is the final judgment, which shows that the issue on the demurrer was duly tried and decision thereon made at same June term, 1884.

ARGUMENT:

It will be seen by the foregoing statement that the obvious purpose of the Plaintiffs, in serving and filing their amended complaint, as set out, was if possible, to take their case out of the statute of limitations, plead in bar. But their amended pleading, in addition to all its other defects, comes manifestly short of their object. It did not cover the period prior to March 1, 1873, in which all their causes of action had not only accrued and the statute of limitations commenced to run, but in which, on most all of them, had been running a very long time.

That when the statute of limitations, as here, has commenced to run, it will not stop, is as well settled a proposition of law as can be found. That the statute under which this defense is made, is valid, is a part of the established law of this Court, Koshkonong vs. Burton, 104, U. S. 668; and that having commenced to run it does not stop, McDonald vs. Hovey, 110, U. S. 619, Hogan vs. Kurtz, 94 id. 773, Harris vs. McGovern 99 id, 161, Sams. Admx. vs. Stein, et. al. 53 Wis. 569, fully confirm.

In Wood on Limitation of Actions, the author's statement of the law applicable to this case, Sec. 6, is: "One of the most important and universal rules, (which is not, however, without exception) is, that time, when it

has once commenced to run in any case, will not cease to do so by reason of any subsequent event which is not within the saving of the statute."

Note 1 then cites numerous authorities in support of this proposition. The exception above referred to, we believe, is, that in a period of war, as the Courts are not open to the belligerents, the statute does not run as to them. Adgar vs. Alston, 15 Wal. 555.

We believe that this rule of law, here invoked, fully disposes of this case, and sustains the judgment of the Court below.

But if further discussion is deemed necessary, we refer the Court to our brief in 197, Amy et. al. vs. Watertown, which precedes this case.

DANIEL HALL and GEO. W. BIRD,
Attorneys for Defendant in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 200 also Nos. 197, 198, 199 and 201.

RUFUS P. SPALDING, SAMUEL H. ALLEN, EDWIN P. DEXTER, BENNETT R. ALLEN and HERMAN R. COFFIN, Executors of WILLIAM S. PIERSON, Deceased, Plaintiffs in Error,

vs.

THE CITY OF WATERTOWN, Defendant in Error.

REPLY TO DEFENDANT'S BRIEF.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

GEORGE P. MILLER,
Of Counsel.

CRAMER, AIKENS & CRAMER, ENGRAVERS & PRINTERS, MILWAUKEE.

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REPLY TO DEFENDANT'S BRIEF.

I.

The defendant in error has argued cases numbered 197, 198, 199, 200 and 201 under the title of number 197, but plaintiffs in error have argued the same under the title of number 200.

I. Defendant's citation of overruled cases.

From pages 8 to 29 of the defendant's brief we have a long list of authorities which are claimed to show that the facts alleged in the amended complaint do not suspend the

running of the statute of limitations. The most of them are overruled cases and must have been cited by the learned counsel through oversight!

There was a conflict of authority in the courts of this country, as well as in England, as to what effect the fradulent concealment by the defendant of the cause of action would have upon the statute of limitations. There are many authorities on both sides of this question, and defendant's counsel have taken pains to cite, as supporting the proposition of law enunciated by them, those cases in England and in this country which hold that an action at law for fraud is outlawed at the expiration of the period of limitation, although the defendant has concealed the facts constituting the fraud during the entire period of limitation. If this question had not been set at rest, as far as this Court is concerned, by the case of Bailey *vs.* Glover, 21 Wallace, 348, the citation of these cases might be justified. It was held in that case, after reviewing the authorities, that the statute of limitation only began to run from the discovery by the plaintiff of the facts constituting the fraud and not from the time when the fraud was committed, although the statute was silent upon the whole subject. This is also the law in Wisconsin. See Encking *vs.* Simmons, 28 Wis., 272.

The following cases, cited by defendant in error in its brief, are decisions to the effect that the statue begins to run when the fraud is in fact committed, although the facts constituting the fraud may have been concealed by the defendant during the period of limitation, and all which cases are, as far as this Court and the Supreme Court of Wisconsin are concerned, overruled cases. They are as follows:—

Hunter *vs.* Gibbon, 1 Hurlstone & Norman, 459.

Imperial Gas Light & Coke Co. *vs.* London Gas Light Co., 10 Exc., 39.

U. S. *vs.* Maillard, 4 Benedict, 459.
The Sam Slick, 2 Curtis, 480.
Coke *vs.* McGinnis, Martin & Yerger (Tenn.), 361.
Peck *vs.* Buck, 59 Tenn., 71.
York *vs.* Bright, 4 Humph.
Stile *vs.* Berry, 1 Hill, 296.
Somerset Co. *vs.* Veghte, 44 N. J. Law, 509.
Callis *vs.* Waddy, 2 Mumf. (Va.), 511.
Fee *vs.* Fee, 10 Ohio, 469.
Smith *vs.* Bishop, 9 Vt., 110.
Clark *vs.* Reeder, 1 Spears (S. C.), 398.
Troup *vs.* Executors of Smith, 20 John, 33.
Leonard *vs.* Pitney, 5 Wend., 30.
Allen *vs.* Mills, 17 Wend., 202.
Humbert *vs.* Trinity Church, 24 Wend., 587.

Many of these cases this Court, in Bailey *vs.* Glover, *supra*, expressly refused to follow, to-wit:

Imperial Gas Light & Coke Co. *vs.* London Gas Light Co., 10 Exc., 39.
York *vs.* Bright, 4 Humph.
Stile *vs.* Berry, 1 Hill, 296.
Callis *vs.* Waddy, 2 Munf. (Va.), 511.
Troup *vs.* Executors of Smith, 20 John, 33.

This is, however, not all. They cite on pages 8, 9 and 10 of their brief, the following three cases, which this Court in Hanger *vs.* Abbott, 6 Wallace, 540, explained, distinguished or overruled, to-wit:

Hall *vs.* Wybourn, 2 Salkelds, 420.
McIver *vs.* Ragan, 2 Wheat., 25.
The Bank of the State of Alabama *vs.* Dalton, 9 How., 522.

The other cases decided by defendant's counsel in their brief, seem to have no application to the case at bar.

The following federal citations will show the general character of the authorities relied on by defendant:

Bowman *vs.* Walters, 1 Howard, 189.
Kendall *vs.* U. S., 107 U. S., 123.
Wood *vs.* Carpenter, 101 U. S., 135.
National Bank *vs.* Carpenter, 151 U. S., 567.
Andræg *vs.* Redfield, 98 U. S., 225.
Leffingwell *vs.* Warren, 111 U. S., 395.
U. S. *vs.* Maillard. 4 Benedict, 459.

These are cited as authority that the facts alleged in the amended complaint do not suspend the running of the statute of limitations. None of these have any application whatever to the question of law involved.

In Bowman *vs.* Walters, *supra*, the only question was whether the plaintiff had been guilty of laches.

In Kendall *vs.* U. S., *supra*, this Court was construing a statute of limitations which enumerated certain disabilities and contained this provision:

"No other disability than those enumerated shall "prevent any claim from being disbarred."

So that this court could not properly insert a disability, because the statute itself expressly prohibited it.

In Wood *vs.* Carpenter, *supra*, and National Bank *vs.* Carpenter, *supra*, it was held that the statute began to run when the fraud was committed, because the facts constituting the fraud, and the facts showing their concealment, were not properly pleaded.

Andrae *vs.* Redfield, *supra*, was a case where the plaintiff filed a bill in equity to enjoin the defendants from pleading

the statute of limitations, because defendants had fraudently induced him to delay bringing his action, and agreed not to plead the statute of limitations. It was held in this court that an injunction should not issue, because there was no proof of fraud, or of such a promise.

In Leffingwell *vs.* Warren, *supra*, defendant had written to treasurer of county to send him a statement of outstanding taxes on his land and he would pay them. The treasurer by mistake omitted one of the taxes, which remained unpaid. Held that this did not show any reason why the person who had procured a tax title under the unpaid tax should not recover.

In Gaines *vs.* Miller, *supra*, the question at issue was whether the plaintiff's remedy was not an action at law, instead of the equity suit which he had brought.

Justice Blatchford, in the case of U. S. *vs.* Maillard, 4 Benedict, 459, was administering the law of New York, and was bound by the interpretation which the New York courts had placed upon the New York Statute of Limitations, and accordingly, properly in that decision, followed the New York decisions, because Federal Courts, when construing State statutes, must interpret them in the same way as the courts of that State have already construed them.

2. Defendant's claim that the Wisconsin Statute of Limitations as found in Revised Statutes of 1839 and 1849 was copied from the New York statute is not true.

Defendant's claim on page 34 of its brief that the Wisconsin Statute of Limitations as found in the Revised Stat-

utes of 1839 and 1849, were taken from the statutes of New York, and that as before our adoption of the statute the courts of New York had placed a special construction upon it, we adopted that constitution when we adopted their statute. Defendant argues that it was well settled in New York that in actions at law the statute of limitations began to run when the fraud was committed, and not upon the discovery of the facts constituting the fraud, and that when we adopted the New York statute of limitations we adopted with it this interpretation. It is, however, not true that these Wisconsin statutes of limitations were copied from the statutes of New York.

The Statutes of Limitations as found in the Revised Statues of Wisconsin for 1839 and for 1849, so far as they pertain to personal actions, are perfect copies of the Revised Statutes of Massachusetts for 1836 (Chapter 120, pages 699, and following of R. S. of Massachusetts for 1836), and are not copies of the statutes of New York for 1829. Like the statutes of limitations of the different states they contain many similar provisions, because all are derived from the statute of 21st of James I. Not only do these statutes of Wisconsin differ from New York in many particulars, but they expressly repudiated the New York doctrine as to the effect of fraud. Par. 27, on page 262 of the R. S. of Wisconsin for 1839, and Sec. 35 of Chap. 127 of the R. S. of Wisconsin for 1849, page 646, provide as follows:

"If any person who is liable to any of the actions men-
"tioned in this chapter shall fraudulently conceal the cause
"of such action from the knowledge of the person entitled
"thereto, the action may be commenced at any time within
"six years after the person who is entitled to bring the same
"shall discover that he has such a cause of action, and not
"afterwards."

This provision having been copied word for word from Sec. 12, of Chap. 120, of the R. S. of Massachusetts for 1836, being found on page 700. This shows what the law was in Wisconsin by express enactment and which in terms repudiated the New York doctrine.

3. The facts alleged in the amended complaint do not show a statutory "subsequent disability."

On page 34 of defendant's brief, defendant claims that if the facts stated in the amended complaint show a disability which would stop the running of the statute, it is a disability which will not prevent most of the plaintiff's causes of action from being barred, because of the well-settled rule that where the statute has once commenced to run no subsequent disability will interrupt or suspend its running. This was the rule at common law, and is found in most of the statutes, but refers entirely to the *statutory* disabilities. The authorities we have cited, as to the effect of war, injunction, statutory prohibition and fraud, abundantly show that the "*subsequent disability*" rule has no application to such a state of facts. In all of the cases cited in our brief from the Supreme Court of the United States, the disabilities which were held to suspend the running of the statute, were "*subsequent*" disabilities.

4. The defendant's claim that the amended complaint shows no fraud on the part of the City of Watertown is unwarranted.

On pages 35 and 36 of defendant's brief, it is claimed that if all the allegations of the amendments to the com-

plaint are true, then they do not show fraudulent conduct on the part of defendant. They argue that because the city has only done what the law allowed, that that cannot be fraud at law. We would refer the learned counsel, for their instruction to the decision of the Supreme Court, in Encking *vs.* Simmons, 28 Wis., 272, especially to the language of the Judge delivering the opinion. In that case a person bought a mortgage upon an idiot's property, and foreclosed it by advertisement with the fraudulent intention of buying in the property for a quarter of its value. The Supreme Court of Wisconsin held that this was a fraud upon the idiot, if his intention was to defraud the idiot by buying in the property for a mere song when he foreclosed the mortgage by advertisement instead of by suit, when a guardian for the idiot would have been appointed, although the statute allowing the foreclosure of the mortgage by advertisement permitted such a foreclosure as against an idiot.

5. The statutes of Wisconsin do not permit courts to acquire jurisdiction of a municipality by a publication of the summons.

The third point made by defendant in its brief (No. 197), pages 37 and 38, is that if the facts alleged by plaintiffs in their amended complaint be true, they show a state of facts which would justify the Court making an order that the summons be served by publication.

The purpose of such a construction is, that if the facts alleged show that the plaintiffs were entitled to an order for the publication of the summons and could thus have acquired jurisdiction of the defendant, they cannot be heard to claim that they were prevented by law from serving the process.

A brief reference to the Statutes of Wisconsin conclusively negatives the assumption that jurisdiction can be acquired over a municipality by the publication of a summons.

Chapter 177 of the Revised Statutes of Wisconsin, entitled, "Of limitations of time for commencement of actions and proceedings," contains the following provisions:

Section 4239. "An action shall be deemed commenced, "within the meaning of any provision of law which limits "the time for the commencement of an action, as to each "defendant, when the summons is served on him, * "* * *."

Section 4240. "*An attempt to commence an action shall be "deemed equivalent to the commencement thereof,* within the "meaning of any provision of law which limits the time "for the commencement of an action, *when the summons is "delivered with the intent that it shall be actually served to the "sheriff * * * of the county in which the defendants or one "of them, usually or last resided; or if a corporation* organized "under the laws of this State be defendant, *to the sheriff* or "the proper officer *of the county in which it was established by "law,* or where its general business is transacted, or where it "keeps an office for the transaction of business, or wherein "any officer, attorney, agent or other person upon whom the "summons may by law be served, resides or has his office; or "if such corporation has no such place of business, or any "officer or other person upon whom the summons may by "law be served, known to the plaintiff, or if such defendant "be a non-resident, or a non-resident corporation, to the "sheriff or other proper officer of the county in which "plaintiff shall bring his action. *But such an attempt must "be followed by the first publication of the summons, or the "service thereof, within sixty days.* If the action be in a court "not of record, the service thereof must be made with due "diligence."

An inspection of Section 4240 will show that it first provides that "*an attempt to commence an action shall be deemed equivalent to the commencement thereof when the summons is delivered with the intent that it shall be actually served to the sheriff of the proper county,*" then it shows what sheriff

is the proper one to whom the summons must be delivered under the different circumstances, as "if the defendant be a corporation the summons must be delivered to the sheriff of the county in which the corporation was established by law or where its general business is transacted or where it keeps an office, or wherein any officer, attorney, agent or any person upon whom the summons may by law be served resides or has his office, or if the corporation have no such place of business, or officer upon whom the summons may be served by law, or is a non-resident, then the plaintiff can deliver the summons to the sheriff of any county.

Then the last provision of the section is that "such an attempt must be followed by the first publication of the summons or the service thereof within sixty days."

Section 4240 then simply provides that an attempt to commence an action shall be deemed equivalent to the commencement thereof, *when the summons is delivered* with intent that it shall be actually served *to the sheriff of the proper county*, but such an attempt must be followed by the first publication of the summons, or the service thereof, within sixty days. It is clear that section 4240 contains no provision as to when, or under what circumstances a summons may be served by publication, but only provides that an attempt to commence a suit, shall be deemed equivalent to the commencement thereof, if the summons be delivered to the sheriff of the proper county and be served within sixty days, either by actual service or by publication.

We must therefore look to other provisions of law to ascertain under what circumstances a summons can be served by publication. It is provided in Chapter 120, of the Revised

Statutes, entitled, "Of the manner of commencing civil actions":

Section 2639. "Service of the summons may be made without the State, or by publication, upon a defendant against whom a cause of action appears to exist, or who appears to be a necessary or a proper party to an action relating to real estate, on obtaining an order therefor, as provided in the next following section, in either of the following cases:"

"1. When such defendant is a non-resident of this State, or his residence is unknown, or is a foreign corporation, and the defendant has property within the State or the cause of action arose therein, and the Court has jurisdiction of the subject of the action, whether the action be founded on contract or tort.

"2. When the defendant, being a resident of this State, has departed therefrom with intent to defraud his creditors, or avoid the service of a summons, or keeps himself concealed therein with the like intent.

"3. When the subject of the action is real or personal property in this State, and the defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein.

"4. When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real estate, and the defendant is a proper party thereto.

"5. When the action is for a divorce.

"6. When the action is against any private corporation organized under the laws of the State, and the proper officers on whom to make service do not exist or cannot be found."

These six paragraphs are the only provisions of law which show under what circumstances the Court may order the service of a summons by publication. The case at bar does not come within the language of the first five sub-divisions, and sub-division six does not provide for a municipality, but only for a *private corporation.* There is no statute in Wisconsin permitting a municipality to be served by publication. The counsel for defendant perceived the weak-

ness of their position and claim, on page 38 of their brief, that the case at bar comes within the meaning of sub-division 2. We will not weary the patience of the Court by arguing such an absurd proposition.

We find nothing in the briefs of defendant in error to make us doubt the soundness of the positions assumed by us in our original brief. The judgments of the lower Court should be reversed.

March 2, 1889.

Respectfully submitted,

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GEO. P. MILLER,

Of Counsel.